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Analysis of the duty of the State to protect indigenous peoples affected by transnational corporations and other business enterprises

Summary

At its ninth session, the Permanent Forum appointed Paimaneh Hasteh,** a member of the Permanent Forum, to conduct an analysis of the duty of the State to protect indigenous peoples affected by transnational corporations and other business enterprises, to be submitted to the Forum at its eleventh session in 2012.

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** This paper has been prepared with the assistance of M. Barkeshli.

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I. Introduction

1. The present study examines the relationship between business corporations and indigenous peoples, the effects of the activities of corporations on indigenous peoples and the duty of the State to protect indigenous peoples against potential exploitation by corporations. The scale and scope of resource exploration and exploitation of indigenous peoples' lands and territories affects indigenous peoples and their communities. The number of transnational corporations engaging in resource exploitation is rising, and they have to begin implementing standards of social responsibility within their projects. At the same time, Governments also need to utilize international standards to guarantee the rights of indigenous peoples at a national level.

2. Large-scale industrial projects involving natural resource exploration, detrimental to economic development, are executed in nearly every State in the world. These projects inevitably affect indigenous peoples by reducing their traditional management systems, sacred places, pastures and hunting and fishing grounds, thereby undermining their economic, cultural and spiritual life and threatening their very existence.

3. The well-being and the future of indigenous peoples depend directly on the policies and practices of States and international institutions. They also depend on the realization of political and economic rights, the development of their human potential, the strengthening of traditional economies, environmental protection and the legal regulation of relations with corporations.

4. Unfortunately, the common practice of private corporations is to exploit the natural resources within indigenous territories. They do not take into account the rights of indigenous peoples and ignore and violate their individual and collective rights, divesting them of their lands and natural resources.

5. While a few cases of good practices can be found on the part of the corporations that comply with international and national norms, concerns remain largely on a systemic level. The current system in many parts of the world caters to codes of conduct designed to focus on the interests of the corporations, which use global normative frameworks to protect their interests and consolidate their rights within national legislation. Incentives are aligned so that States are inclined to protect the interests of corporations investing in their countries, rather than safeguarding the well-being of indigenous peoples.

6. At the international level there are instruments that protect indigenous peoples' rights to development. The United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organization (ILO) Convention No. 169 on indigenous and tribal peoples (1989) direct States to recognize the inherent rights of indigenous peoples to their lands, resources and self-government and do not limit these rights to the spheres of traditional economy and culture. These instruments recommend that States cooperate with indigenous peoples and that they undertake genuine consultations regarding any project affecting their ancestral lands, territories and resources.

7. It has become a generally accepted principle in international law that indigenous peoples should be consulted in any decisions affecting them. This norm is reflected in articles 6 and 7 of ILO Convention No. 169, and has been articulated

by United Nations treaty supervision bodies in country reviews and in examinations of cases concerning resource extraction on indigenous lands. The existence of a duty to consult indigenous peoples is also generally accepted by States in their discussions surrounding the draft declarations on indigenous peoples' rights, at the Organization of American States (OAS) and also during the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. States and the private sector must obtain the free, prior and informed consent of indigenous peoples in any planned projects, exercise good faith, and guarantee their full and effective participation and a share in the benefits arising from such projects. Problems arise, however, over the implementation of these standards, and the alignment of incentives within the national domain.

8. This widespread acceptance of the norm of consultation illustrates that it has become part of common international law. Ambiguity remains, however, as to the extent and content of the duty of consultation owed to indigenous peoples. In particular, there is much debate as to whether indigenous peoples' right to participation in decisions affecting them, extend to a veto power over State action. Logically, the extent of the duty and thus the level of consultation required is a function of the nature of the substantive rights at stake. Thus the more critical issue underlying the debate over the duty to consult is the nature of indigenous peoples' rights in lands and resources.

9. Indigenous peoples have consistently advanced plenary conceptions of their rights over lands and resources within their traditional territories. In asserting property rights, indigenous peoples seek protection of economic, jurisdictional and cultural interests, all of which are necessary for them to pursue their economic, social and cultural development. Indigenous peoples' rights over land stem not only from possession, but also from indigenous peoples' articulated ideas of communal stewardship over land and a deeply felt spiritual and emotional nexus with the earth and its fruits. Furthermore, indigenous peoples have typically looked to a secure land and natural resource base to ensure the economic viability of their communities.

10. It is easy to understand that natural resources enable indigenous peoples to ensure a foundation for their well-being. Well-being is often interpreted in indigenous cultures as a full, integral life based on identity, dignity and wisdom in harmony with Nature and traditional knowledge systems. It is a balanced life based on a worldview of equality that incorporates humane, ethical and holistic dimensions of living in harmony with nature.

11. The historic relationship between indigenous peoples and corporations that operate on their lands and territories can best be described as one of conflict. Corporate entities have often violated and ignored the individual and collective rights of their indigenous counterparties, who have suffered the negative consequences of corporate practices, especially in the extractive and energy industries. Negotiations have been rare and limited in scope, and corporations have usually taken full advantage of their position of strength in negotiations.

12. The achievement of equitable and mutually beneficial relations between indigenous peoples and corporations is based on the recognition of indigenous peoples' rights to their lands, territories and natural resources. It also includes the acknowledgement of their right to self-determination, States' respect and protection for those rights as provided for in international law, and of course, the free, prior

and informed consent of indigenous peoples when considering the exploitation of resources.

13. The consequences of transnational corporate activities for indigenous peoples' lands and territories include non-recognition of indigenous peoples' property rights, eviction, displacement and forced migration. These violations not only impact their way of living, but also their culture and heritage. They also flout indigenous peoples' rights to use and exploit their natural resources and facilitate the destruction and the contamination of the environment and ecosystems. This includes soil erosion, the reduction of flora and fauna and loss of biodiversity in their lands and territories, the constant pressure over their territories, and the loss of natural resources for fishing, hunting, gathering, herding, and other agricultural activities.

14. In all cases, consultations must meet minimum procedural requirements, including ensuring that the indigenous peoples have adequate information on the proposed measures to meaningfully participate, and that the procedures for consultation are culturally appropriate. However, the content of that duty is a function of the extent of the substantive rights at issue. As a matter of international law, indigenous peoples have rights of property over land and natural resources arising out of their own customary systems. These property rights include collective ownership of their lands and attract all the protections attached to property generally. They are further reinforced by the cultural content of indigenous peoples' connection with their lands. Where property rights are indirectly but still significantly affected, for example, in the extraction of subsoil resources that are deemed to be under State ownership, the State's consultations with indigenous peoples must at least have the objective of achieving consent. If consent is not achieved, there is a strong presumption that the project should not go forward. If it proceeds, the State bears a heavy burden of justification to ensure the indigenous peoples share in the benefits of the project, and must take measures to mitigate its negative effects.

II. International law

15. Over the past two decades vital progress has been made in the development of legal normative frameworks in the international sphere with respect to the rights of indigenous peoples and their relationships with States. ILO Convention No. 169, which is binding on the countries that have ratified it, is a prime example. Today, 22 countries have ratified the Convention, 15 of which are from Latin America. The Convention recognizes indigenous peoples' right to their lands and territories, their social and religious values, the application of indigenous law, access to health services, equal opportunities for employment and training, non-discrimination and respect for cultures and ways of life. Importantly, the Convention recognizes indigenous peoples' right to apply their own models of development.

16. International legal instruments relevant to the rights of indigenous peoples include the International Convention on the Elimination of All Forms of Racial Discrimination,[1] the Convention on the Rights of the Child,[2] and the Convention on

[1] United Nations, *Treaty Series*, vol. 660, No. 9464.
[2] United Nations, *Treaty Series*, vol. 1577, No. 27531.

Biological Diversity.[3] Paragraph 20 of the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in 1993,[4] is also relevant. Other international normative frameworks that also affirm the rights of indigenous peoples are numerous and they include the Universal Declaration of Human Rights (1948),[5] the ILO Convention on Indigenous and Tribal Populations Convention of 1957 (No. 107), the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the International Covenant on Economic, Social and Cultural Rights[6] and the International Covenant on Civil and Political Rights,[6] which entered into force in March 1976.

17. The United Nations Declaration on the Rights of Indigenous Peoples is a response to indigenous peoples' historical claim to a legal and political instrument that protects their human rights. The Declaration recognizes the political, the territorial, the economic, the social and the cultural rights of indigenous peoples and serves as a vital step towards the recognition, the promotion and the protection of indigenous peoples' rights and freedoms. The Declaration also acts as a minimalist framework of norms for indigenous peoples' survival, dignity and well-being.

18. There are other legal normative instruments that promote and safeguard the rights of indigenous peoples. The instruments include General Recommendation No. 23 of the Committee on the Elimination of Racial Discrimination, concerning indigenous peoples (fifty-first session, August 1997), which calls on State parties to not only recognize and respect the indigenous peoples' distinct culture, history, language and way of life as an enrichment of the State's cultural identity, but also to promote its preservation. The Second International Decade of the World's Indigenous People (2005-2015) calls upon Member States to increase their action and cooperation with indigenous peoples to achieve significant progress in the global improvement of their situation. The Universal Declaration on Cultural Diversity (2001) emphasizes the role of consolidating cultural diversity as an ethical imperative and reminds States of the position of indigenous peoples within that diversity. The working paper entitled "UNDP and indigenous peoples: a policy of engagement" (2001) establishes the United Nations Development Programme (UNDP) guidelines on this topic as well.

19. The report of the Expert Meeting on Positive Corporate Contributions to the Economic and Social Development of Host Developing Countries of December 2005 alludes to the sustainability of business operations that increasingly require and draw attention to their longer term outcomes. The report focuses on the relationship between corporations and the communities in which they operate, and points out the link between responsible business and corporate social responsibility.

20. In his third annual report to the Human Rights Council[7] the Special Rapporteur on the rights of indigenous peoples made reference to the issue of corporate responsibility with respect to indigenous peoples' rights within the framework of international standards and the expectations generated in the international community concerning that matter. He noted that there was a lack of awareness of indigenous peoples' rights that has led to dispossession, environmental

[3] United Nations, *Treaty Series*, vol. 1760, No. 30619.

[4] A/CONF.157/24 (Part I), chap. III.

[5] Resolution 217 A (III)

[6] See resolution 2200 A (XXI), annex.

[7] A/HRC/15/37.

contamination, forced displacement and permanent damage to their culture, spirituality and traditional knowledge.

21. Corporate activities in indigenous territories are becoming increasingly frequent, and are causing serious social conflicts that spark circles of violence and in turn result in new human rights violations. It is worth pointing out that indigenous peoples are not the only victims of this cycle: social conflicts related to corporate activities in indigenous territories have had a negative impact on the economic interests and on the public image of the corporations themselves. It is also important to note that these same conflicts tarnish the image and the interests of the Governments concerned, raising the possibility of a shift in incentive functions on the part of the States in case conflicts continue. It has been the duty of corporations to respect human rights and the concept of due diligence as reflected in the United Nations Global Compact. The Compact is the most important international initiative undertaken to date that guarantees the adoption of social responsibility by businesses.

22. Within the inter-American system, the work of the Inter-American Commission on Human Rights on the promotion, the fostering and the defence of the human rights of indigenous peoples is worth noting. In 1971, the Commission established that indigenous peoples had the right to special legal protection to counteract severe discrimination. It called on the members of OAS to implement and respect article 39 of the Inter-American Charter of Social Guarantees, adopted by the OAS General Assembly in 1948. In 1972, it issued the resolution entitled "Special protection for indigenous populations: action to combat racism and racial discrimination", which called on Member States to act with the greatest zeal to defend the human rights of indigenous peoples.[8]

23. The human rights organs of the inter-American system (the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights) play important roles in resolving cases of indigenous rights violations. Their decisions are binding on States members of OAS. Symbolic cases resolved by the Court include the case of the *Mayagna (Sumo) Awas Tingni Community versus the State of Nicaragua*, concerning the indigenous community's rights to their ancestral lands, and the case of *Yakye Axa Indigenous Community versus the State of Paraguay*. In both cases, the Court established that the States were obligated to provide effective protection that took into account the particularities, the economic and social characteristics and the special situation of vulnerability of indigenous communities, as well as their common law, values and customs.

24. To minimize charges of bias against globalization and the transnational corporations that are its most visible embodiment, the normative United Nations instruments have come to include other business enterprises, not only transnationals, within their remit. But they have often exempted nationally operating businesses if they had no connections to transnational corporations, if the impact of their activities was only local and if their activities included no violations of the right to the security of the person.

[8] Inter-American Commission on Human Rights, "The Human Rights of the Indigenous People in the Americas", chap. 1 (Organization of American States, 2000).

25. According to the most recent figures, 77,000 transnational firms span the global economy today, with some 770,000 subsidiaries and millions of suppliers.[9] Transnational corporations lead operations in more States than ever before, and increasingly in socio-political contexts that pose entirely new human rights issues for them. In addition, for many corporations, going global has translated into adopting network-based operation models involving multiple corporate entities spread across and within different territories and countries.

26. Networks, by definition, involve divesting a certain amount of direct control over significant aspects of operation, substituting negotiated relationships for hierarchical systems. This style of organization has improved the economic efficiency of corporations. But it has also increased risk and challenges for the companies with respect to managing their global value chains, which constitute the full range of activities required to bring a good or service from conception to end sale.[10] As the number of participating units in value chains skyrocket, so does the vulnerability any particular link in the global chain presents to the global enterprise as a whole. These distribution networks have also increased the available entry points from which civil society activists can seek to leverage a company's brand and resources in the hope of improving not only the company's performance, but also the setting in which it functions.

27. Transnational corporate networks pose a regulatory challenge to both the domestic and international legal systems. In legal terms purchasing goods and services from unrelated suppliers generally is considered an arms-length market exchange, not an intra-firm transaction. Among related parties, a parent company and its subsidiaries are distinct legal entities, and even large scale projects may be incorporated separately. Any one of them may be engaged in joint ventures with other firms or government actors. The doctrine of limited liability dictates that a parent corporation is not legally liable for wrongs committed by a subsidiary even where it is the sole shareholder, unless the subsidiary is under such close operational control by the parent that it can be seen as its mere agent. Each legally distinct entity is subject to the laws of the countries and territories in which it operates, but the transnational corporate group or network is not subjected directly to international law. It is this foundational fact that the move to establish global legal standards for transnational corporations seeks to alter. Though standards have begun to change, this same foundational challenge stresses the importance of country-level legislations and regulations, and duty of the State to protect indigenous peoples regardless of the international imperative.

28. Further challenges surround the effort to subject transnational corporations to international legal structures. If international human rights obligations are to be attributed to transnational corporations, on what basis shall this be done? It seems clear that long-standing arguments over whether such companies could be subjects of international law are yielding to new realities on the ground. For example, corporations have acquired significant rights under various types of bilateral

[9] United Nations Conference on Trade and Development, *World Investment Report 2006* (United Nations publication, Sales No. E.06.II.D.11). Available from www.unctad.org/en/docs/wir2006_en.pdf.

[10] Beth Kytle and John Gerard Ruggie, "Corporate Social Responsibility as Risk Management: A Model for Multinationals", Working Paper No. 10 (Harvard University, John F. Kennedy School of Government, March 2005). Available from www.ksg.harvard.edu/m-rcbg/CSRI/publications/workingpaper_10_kytle_ruggie.pdf.

investment agreements and host government treaties, they set international standards in several industries, and certain corporate acts are directly prohibited in a number of civil liability conventions dealing with environmental pollution.[11] Thus, transnational corporations have become, at the very least, participants in the international legal system with the capacity to bear some responsibilities and duties under international law.[12]

29. The argument made for the promotion of international normative legal frameworks often begins by claiming that every individual and every organ of society shall strive to promote respect for the rights and freedoms of indigenous peoples. Transnational corporations have greater power than some Governments to affect the realization and the protection of rights, the argument continues, and "with power should come responsibility".[5] Therefore, these firms must bear responsibility for the rights they may impact. Because some States are unable or unwilling to make them do so under domestic law, there must be direct and uniform corporate responsibilities under international law.

30. The list of rights that appear particularly relevant to business include rights that States have not recognized or are still debating at the global level, including consumer protection, the precautionary principle for environmental management, and the principle of free, prior and informed consent of indigenous peoples. This poses a challenge, but a far more serious problem concerns the international normative legal structures' proposed formulas for attributing human rights duties to corporations. After recognizing that States are the primary duty bearers, the norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights, in section A, paragraph 1, adds: "Within their respective spheres of activity and influence, transnational corporations and other business enterprises have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect" nationally and internationally recognized human rights. That is to say, within corporations' spheres of influence they would have exactly the same range of duties as States — from respecting to fulfilling rights — the only difference being that States' duties would be primary and corporations' duties secondary. According to John Ruggie, the former Special Representative for Business and Human Rights of the Secretary-General, the concept of corporate spheres of influence, though useful as an analytical tool, seems to have no legal pedigree.[13] Therefore, Ruggie believes, the boundaries within which corporations' secondary duties would take effect remain unknown. This situation paves the way for the likelihood that the attribution of corporate duties in

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[11] See A/HRC/4/35, para. 20; see also Steven R. Ratner, "Business", *The Oxford Handbook of International Environmental Law* (Oxford University Press, 2007).

[12] As early as 1949, the International Court of Justice stated: "The subjects of law in any legal system are not necessarily identical in nature or in the extent of their rights, and their nature depends on the needs of the community"; see "Reparations for injuries suffered in the service of the United Nations, Advisory Opinion of 11 April 1949", *I.C.J. Reports 1949*.

[13] Two law firms conducted a search of 10 jurisdictions for the mandate and did not find the term "spheres of influence" used in legal contexts. It was introduced into corporate social responsibility discourse by the Global Compact, and has proven to be useful as a tool in corporate policymaking. It assists companies to scan their operating environments for possible sources of risk and opportunities that could affect their social licence to operate. See, e.g., Business Leaders Initiative on Human Rights, United Nations Global Compact, and Office of the United Nations High Commissioner for Human Rights, "A Guide for Integrating Human Rights into Business Management". Available from www.blihr.org.

practice would come to hinge on the respective capacities of States and corporations in particular situations. Where States were unable or unwilling to assume their duties, the pressure would be on companies to engage. This may be desirable in special circumstances, but as a general proposition it is deeply troubling on several grounds.

31. Imposing the full range of duties on transnational corporations directly under international law by definition reduces individual Governments' discretionary space within the scope of those duties. The international human rights regime recognizes the legitimate need of Governments to exercise discretion for making trade-offs and balancing decisions, and especially for determining how best to secure the fulfilment of economic, social and cultural rights on which corporations may have greatest influence. International legal structures attempt to square the circle by requiring companies to follow national laws and policy priorities. This, of course, merely adds layers of conflicting prescriptions for corporations to follow. In addition, where governance is weak to begin with, shifting obligations onto corporations to protect and fulfil rights beyond a carefully circumscribed set of limits may undermine national capacity and domestic incentives to make Governments more responsible to their own populations, which surely is the most effective way to realize rights.

32. Finally, attributing the same range of duties to companies and firms that also apply to States, differentiated only in degree within undefined corporate spheres of influence, would generate endless strategic gaming and legal battles on the part of Governments and corporations alike. This is illustrated by several recent cases where usually a corporation and a government authority contest who reneged on their legally defined obligations to provide support and protection for indigenous peoples.[14]

33. While it may be wise to think of corporations as organs of society, it is vital to note that they are specialized organs, performing specialized operations. The range of their responsibilities should reflect that fact. In a 1949 advisory opinion, the International Court of Justice explained that an international person is not the same thing as a State, and that its rights and duties are not the same as those of a State. Imposing on corporations the same range of responsibilities as States for all rights

[14] After members of surrounding indigenous communities occupied mining sites of Companhia Vale do Rio Doce (CVRD) in protest of what they regarded as insufficient provision of funds and services by the company, CVRD refused to continue making royalty payments to the communities through the National Indian Foundation, with which it had an agreement to do so, on the grounds that the communities were using illegal means to force the company to fulfil their demands. CVRD reported the events to the Organization of American States, seeking clarification of State duties regarding indigenous peoples. The Foundation sought an injunction from Brazil's domestic courts, which was granted, ordering CVRD to resume payments. The Foundation is also seeking a declaration from the Brazilian Federal Court attributing legal responsibility to CVRD for social impacts caused by its mining activities; see CVRD and the Foundation's press releases on this issue. Available from www.cvrd.com.br/saladeimprensa/en/releases/release.asp?id=16724 and www.funai.gov.br/ultimas/noticias/1_semestre_2007/janeiro/un0131_001.htm.

they may impact may cause conflict between the two spheres and renders international and domestic rulemaking itself highly problematic.[15]

III. State duty

34. Despite the challenges stated above, the State is the primary duty bearer in relation to human rights, and certainly with respect to the rights of indigenous peoples. But the State's duty to protect against third party abuses of rights, including by business entities, has received relatively little attention in the debate surrounding the international normative and legal structures. This is surprising since international law firmly establishes that Governments have such a duty within their jurisdiction.[16] Indeed, the United Nations and regional human rights mechanisms have addressed it with increasing frequency. Earlier United Nations human rights treaties, such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, do not specifically address State duties regarding business. They impose generalized obligations to ensure the enjoyment of rights and prevent non-State abuse. Thus, the International Convention on the Elimination of All Forms of Racial Discrimination requires each Government to stop racial discrimination by "any persons, group or organization" (art. 2.1 (d)). And some of the treaties acknowledge rights that are particularly relevant in business contexts, including rights related to employment, health and indigenous communities.

35. Beginning with the Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979, and including the Convention on the Rights of the Child and the recently adopted Convention on the Rights of Persons with Disabilities, business is addressed more directly and in greater detail. The Convention on the Elimination of All Forms of Discrimination against Women, for example, requires Governments to take all appropriate measures to eliminate discrimination against women by any "enterprise" (art. 2 (e)), and within such specific contexts as "bank loans, mortgages and other forms of financial credit" (art. 13 (b)). The treaties generally give States discretion regarding the modalities for regulating and adjudicating non-State abuses. The treaty bodies elaborate upon the duty to protect such rights.

36. General Comment 31 of the Human Rights Committee confirms that under the International Covenant on Civil and Political Rights "the positive obligations on States parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its

[15] For an attempt to sketch out an analytical foundation for corporate duties that does recognize the respective social roles of States and corporations, see Steven R. Ratner, "Corporations and Human Rights: A Theory of Legal Responsibility", *Yale Law Journal*, vol. 111 (2001).

[16] States also have duties to respect, promote and fulfil rights, but the most business-relevant is the duty to protect because it is directed at third party abuse. Beyond the national territory, the scope of the duty will vary depending on the State's degree of control. The United Nations human rights treaty bodies generally view States parties' obligations as applying to areas within their "power or effective control". Note that where corporations perform public functions or are state-controlled, their acts may be attributed to the State under international law; see General Assembly resolution 56/83.

agents, but also against acts committed by private persons or entities".[17] It further explains that States could breach Covenant obligations where they permit or fail "to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities". The Committees express concern about State failure to protect against business abuse most frequently with respect to the right to non-discrimination, indigenous peoples' rights, and labour and health-related rights. But they indicate that the duty to protect applies to all substantive rights recognized by the treaties that private parties are capable of abusing.

37. The Committees tend not to specify the precise content of required State action, but generally recommend regulation through legislation and adjudication through judicial remedies, including compensation where appropriate. The Committees have not expressly interpreted the treaties as requiring States to exercise extraterritorial jurisdiction over abuses committed abroad by corporations domiciled in their territory.[18] But nor do they seem to regard the treaties as prohibiting such action, and in some situations they have encouraged it. For example, the Committee on Economic, Social and Cultural Rights has suggested that States parties take steps to "prevent their own citizens and companies" from violating rights in other countries.[19] The Committee on the Elimination of Racial Discrimination recently noted "with concern" reports of adverse impacts on the rights of indigenous peoples in other countries from the activities of corporations registered with a State actor. The Committee encouraged that State to "take appropriate legislative or administrative measures" to prevent such acts, recommended that the State explore ways to hold such corporations "accountable", and asked that the State provide information on measures taken in its next periodic report.[20]

38. In general, international law permits a State to exercise extraterritorial jurisdiction provided there is a recognized basis: where the actor or victim is a national, where the acts have substantial adverse effects on the State, or where specific international crimes are involved.[21] Extraterritorial jurisdiction must also meet an overall reasonableness test, which includes non-intervention in other States' internal affairs.[22]

39. Debate continues over precisely when the protection of human rights justifies extraterritorial jurisdiction. The regional human rights systems also affirm the State

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[17] Human Rights Committee, General Comment 31, HRI/GEN/1/Rev.8 and Add.1.

[18] Note that both the Convention against Torture and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography require States parties to establish jurisdiction over certain offences where the victim or alleged offender is a national, or when the alleged offender is present in their territory and there is no extradition. Neither the Committee against Torture nor the Committee on the Rights of the Child have discussed these provisions in relation to corporations.

[19] See Committee on Economic, Social and Cultural Rights, General Comment 15, HRI/GEN/1/Rev.8 and Add.1.

[20] See CERD/C/CAN/CO/18 and Add.1.

[21] Under the principle of "universal jurisdiction" States may be obliged to exercise jurisdiction over individuals within their territory who allegedly committed certain international crimes. It is unclear whether and how such obligations extend jurisdiction over juridical persons, including corporations.

[22] Of course, the entire human rights regime may be seen to challenge the classical view of non-intervention. The debate here hinges on what is considered coercive.

duty to protect against non-State abuse and establish similar correlative State requirements to regulate and adjudicate corporate acts. The increasing focus on protection against corporate abuse by the United Nations treaty bodies and regional mechanisms indicates a growing concern that States either do not fully understand or are not always able or willing to fulfil this duty. This concern is reinforced by the results of a questionnaire survey of States that the Special Representative for Business and Human Rights has conducted, asking them to identify policies and practices by which they regulate, adjudicate and otherwise influence corporate actions in relation to human rights.[23] Of those States responding, very few report having policies, programmes or tools designed specifically to deal with corporate human rights challenges. A larger number say they rely on the broader framework of corporate responsibility initiatives, including such soft law instruments as the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises or voluntary initiatives like the Global Compact. Very few explicitly consider human rights criteria in their export credit and investment promotion policies, or in bilateral trade and investment treaties, points at which Government policies and global business operations most closely intersect.

IV. National legislation

40. State laws that implement international conventions and laws on indigenous peoples differ from country to country. For example, indigenous peoples' rights in the Russian Federation are outlined in different laws, including Federal Law No. 82-FZ on guarantees of the rights of numerically small indigenous peoples of the Russian Federation adopted in April 1999, Federal Law No. 104-FZ on the general principles of organizing communities of numerically small indigenous peoples of the north adopted in July 2000, and Federal Law No. 49-FZ on the territories of traditional natural resource use of numerically small indigenous peoples of the north, Siberia and far east of the Russian Federation adopted in May 2001. Legislation regarding the rights of Russian indigenous peoples was developed within the framework of the country's political and economic reforms, which were in themselves influenced by preferences and policies of Russia's foreign investors.

41. On the American continent, constitutional reforms in the last decade have acknowledged the political, the economic, the social, and the cultural rights of indigenous peoples. Countries such as the Plurinational State of Bolivia and Ecuador have promoted novel constitutional frameworks that acknowledge and guarantee the rights of indigenous peoples. Article 2 of the Constitution of the Plurinational State of Bolivia guarantees indigenous peoples' self-determination, acknowledging their rights to autonomy, self-government and culture, while recognizing their institutions and their territories. The new Constitution of Ecuador also guarantees the existence of indigenous peoples and their collective rights to their identity and to the ownership of their communal lands. It guarantees indigenous peoples the right to participate in the use, the exploitation, the administration and the conservation of the renewable natural resources found on their lands. It also recognizes their right to free, prior and informed consultation and a share in the profits that these projects generate. Furthermore, it also guarantees them compensation for social, cultural and environmental damages caused.

[23] See A/HRC/4/35/Add.1.

42. In Nicaragua, in addition to the constitutional changes of 1987, a regime of autonomy has been established for the indigenous peoples of the Caribbean coast through the implementation of the Autonomy Statute for the Atlantic Coastal Regions of Nicaragua, Law No. 28, and its corresponding bylaws. This process of autonomy has been strengthened over a 20-year period. Other pieces of legislation have recently been proposed to complement certain aspects of the Statute, including the Law on the communal property regime of the indigenous peoples and ethnic communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and the Coco, Bocay, Indio and Maiz Rivers (Law No. 445). Approved in December 2002, this law provides for the organization of indigenous authorities in their territories and assigns them competencies in respect of the territorial administration and management of natural resources.

43. Many States have carried out constitutional reforms or adopted legislation that recognizes indigenous peoples' individual and collective rights, including Argentina, the Bolivarian Republic of Venezuela, Brazil, Colombia, Guatemala, Mexico, Panama, Paraguay and Peru. Legislative reforms address such diverse aspects of the issue as property rights, autonomy, self-government and the recognition of their common law in the regulation of internal relations. These reforms recognize the jurisdiction of indigenous authorities in line with their own law. In Cambodia, there are laws that recognize indigenous peoples' rights with respect to their lands and forest management. In 1954, Malaysia adopted the Aboriginal Peoples Act on the protection of indigenous groups known as "Orang Asli", and in the Philippines, the Indigenous Peoples' Rights Act of 1997 recognizes various rights, including the right to ancestral lands and territories.

44. On the African continent, only a handful of States have recognized the existence of indigenous peoples. The Constitution of Ethiopia protects the unconditional right to self-determination of each nation and peoples. The laws of Cameroon, the Republic of Congo and Uganda protect the rights of indigenous peoples. In Algeria, the 1996 Constitution recognizes the Amazigh dimension of the Algerian culture. The Constitution of Namibia recognizes the indigenous Nama language. In South Africa, while indigenous peoples are not recognized as such, the Khoe and San peoples are mentioned in the 1996 Constitution, which protects the usage of indigenous languages.

45. In the United States of America, American Indian law includes treaties and federal Indian law. Native American recognition refers to the process of recognition of a tribe by the United States Federal Government or of a person being granted membership in a federally recognized tribe. There are 561 federally recognized tribal governments. The United States recognizes the right of these tribes to self-government and supports their tribal sovereignty and self-determination. The tribes possess the right to establish the legal requirements for membership, form their own governments, enforce laws (both civil and criminal), tax, license and regulate activities, zone and exclude persons entry and residence on tribal territories.

46. The Australian legal framework has recognized indigenous peoples' rights to land on the basis of traditional occupancy. During the 1970s, the Commonwealth and State Governments initiated legislation in order to return lands to indigenous communities and to allow their claims to other lands. In 1992, the High Court handed down the landmark *Mabo* decision, which rejected the discriminatory doctrine of *terra nullius* (vacant land). In response to the historic High Court

decision, the Australian Government enacted the Native Title Act in 1993. There is no provision in the Act for native titleholders to veto mining on their land, although it does provide for the right to negotiate under certain circumstances. The Act also allows for future activities that will have minimal effect on native title to be excluded from the arrangements that give negotiation rights to native titleholders. This will be of special relevance and value in mineral exploration. Existing covenants and conditions in the pastoral lease will continue to apply and prevail over native rights. Valid pastoral leases can be renewed even if native title has survived the lease and the use of the land. The Act ensures that the existing rights of pastoral leaseholders are protected. Should any invalidity be found because of native title, the lease will be validated.

47. With respect to mining and other resource exploitation on lands subject to native title claims, indigenous representative bodies have negotiated agreements that provide benefits for indigenous owners. It's worth noting that indigenous rights are often inadvertently undermined because either the terms of such agreements are kept secret, or indigenous peoples have limited time to negotiate, or due to inadequate legal representation. In contrast to the 1993 Act, the 1998 Native Title Act Amendment Bill was drawn up without the consent of, or consultation with, indigenous people. The amendment wound back indigenous rights and, in some instances, resulted in the outright extinguishment of native title. At the same time, non-indigenous land interests secured windfall gains.

48. The relationship between Māori and the New Zealand Government is grounded in the Treaty of Waitangi, which, despite the ongoing debate in New Zealand, does hold an important place in the country's legal framework. The Treaty establishes partnerships between Māori and the Government. For example, separate seats have been reserved for Māori in the country's Parliament. This guarantees their representation and enables them to influence decision-making at the national level. The responsibility to consult Māori people on issues that affect them is inherent in the Treaty, though it is not regarded absolutely. Even when consultations do take place, they are often not in accordance with traditional Māori decision-making processes.

49. In 1979, Greenland was granted Home Rule from Denmark and in 2008, Greenland voted to transfer more power from the Danish Royal Government to the local Greenlandic government. In June 2009, Greenland assumed self-determination with responsibility for self-governance in judicial affairs, policing and issues pertaining to natural resources. Also, Greenlanders were recognized as a separate people under international law. Denmark maintains control of foreign affairs and defence matters. It upholds the annual block grant of 3.2 billion Danish kroner, but, as Greenland begins to collect revenues from its natural resources, the grant will gradually diminish.

50. In Norway, Sweden, Finland and the Russian Kola Peninsula, the Sami people are divided by the formal boundaries of the four States. However, they continue to exist as one people united by cultural and linguistic bonds and a common identity. They have traditionally inhabited a territory called Sápmi, which spans the northern parts of these countries. The Sami Parliamentary Council, formed in 2000, is composed of the Sami Parliaments of Norway, Sweden and Finland and includes the permanent participation of Sami from the Russian Federation. The Council is authorized to deal with cross-border issues affecting the Sami people, including

language, education, research and economic development. The Sami Parliaments are the principle vehicles for Sami self-determination in Norway, Sweden and Finland, and they represent a vital model for indigenous self-governance and participation in decision-making. Also, the Nordic States have gradually developed some protection for Sami lands and their reindeer-herding activities. Significant tracts of land are continuously used for reindeer herding.

51. Development projects that exploit the natural resources on indigenous peoples' lands and territories often produce conflicting positions. This situation exists even in cases where indigenous peoples participate, and can often divide communities between those who support the projects and those who oppose them. Indigenous peoples are conscious of their disadvantaged position when dealing with the interests of States and corporations. They are often ignored because their aspirations, their rights and their interests are not taken into account, and they are denied their right to effective participation in the political, social, economic, cultural and environmental issues that concern them.

52. In the past few decades, indigenous peoples have developed their own agendas in response to their own realities by identifying programme areas, lines of action and minimal collaboration and coordination schemes. These lines of action refer to issues such as defending territories against mega-projects, protecting important sites, dealing with climate change, considering the application, the monitoring and the reforms of international and State-level legal frameworks, cultural revitalization, defending cultural and intellectual heritage, and striving for self-determination. Indigenous peoples have also developed different forms of protest against policies formulated and implemented by States, changes in the legal frameworks that affect their relationship with governments, and implementation of mega-projects that affect their interests, resources, culture, and lives.

V. Conclusions and recommendations

53. Increasing the effectiveness of the international human rights regime to deal with the challenges posed by the rise of transnational corporate activity around the world is a long-term aim. First, any "grand strategy" needs to strengthen and expand from the existing capacity of States and the States system to regulate and adjudicate harmful actions by corporations, not undermine it. Currently, at the domestic level some Governments may be unable to take effective action on their own, whether or not the will to do so is present. In the international arena, States may compete for access to markets and investments, as a result of which collective action problems may restrict or impede their position as the international community's public authority. This observation drives the desire to impose direct obligations on corporations under international law. But doing so can have adverse effects on governance capacities, as we have seen, leaving aside the question of any such proposals' current political feasibility and legal enforceability.

54. It seems more promising to expand the international regime horizontally, by seeking to further clarify and progressively codify the duties of States to protect human rights against corporate violations: individually, as host and home States, as well as collectively through the international cooperation requirement of several United Nations human rights treaties. This will also establish greater clarity regarding corporate responsibility and accountability, and create a broader

understanding among States about where the current regime cannot be expected to function as intended, and its vertical extension, therefore, is essential. International instruments may well have a significant role to play in this process, as carefully crafted precision tools complementing and augmenting existing institutional capacities.

55. Second, the focal point in the business and human rights debate needs to expand beyond individual corporate liability for wrongdoing. This is a critical element that must be addressed in its own right. An individual liability model alone cannot fix larger systemic imbalances in the global system of governance. As the political philosopher Iris Marion Young stated in an important discussion of labour abuses in global supply chains: "because the injustices that call for redress are the product of the mediated actions of many ... they can only be rectified through collective action".[24] And that, she continued, required a broader construction of "political" or "shared responsibility". Its aim, Young explained, was not to assign blame for discrete acts through backward-looking judgments, but "to change structural processes by reforming institutions or creating new ones that will better regulate the process to prevent harmful outcomes".

56. Soft law hybrid arrangements like the Kimberley Process represent an important innovation by embodying such a concept: combining importing and exporting States, companies and civil society actors, as well as integrating voluntary with mandatory elements. They deserve attention, support and emulation in other domains. Finally, many elements of an overall strategy lie beyond the legal sphere altogether. Consequently, the interplay between systems of legal compliance and the broader social dynamics that can contribute to positive change needs to be carefully calibrated.

57. Any successful regime needs to motivate, activate and benefit from all of the moral, social and economic rationales that can affect the behaviour of corporations. This requires providing incentives as well as punishments, identifying opportunities as well as risks, and building social movements and political coalitions that involve representation from all relevant sectors of society, including business, much as has been occurring in the environmental field. The human rights community has long urged a move "beyond voluntarism" in the area of business and human rights.[25] In sum, international law has an important role to play in constructing a global regime to govern business and human rights. The effectiveness of its contributions will be maximized if it is embedded within, and deployed in support of an overall strategy of increasing governance capacity in the face of enormously complex and ever changing forces of globalization.

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[24] Iris Marion Young, "Responsibility and Global Labor Justice", *Journal of Political Philosophy*, vol. 12, No. 4, pp. 365 and 387 (2004).

[25] International Council on Human Rights Policy, *Beyond Voluntarism: Human rights and the developing international legal obligations of companies* (2002). Available from www.ichrp.org/paper_files/107_p_01.pdf.

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New York, 7-18 May 2012
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Future work of the Permanent Forum, including issues of the Economic and Social Council and emerging issues

Study on the impacts of land use change and climate change on indigenous reindeer herders' livelihoods and land management, including culturally adjusted criteria for indigenous land uses

Note by the secretariat

Summary

At its tenth session, in May 2011, the Permanent Forum appointed Anna Naykanchina,** a member of the Permanent Forum, to undertake a study on the impacts of land use change and climate change on indigenous reindeer herders' livelihoods and land management, including culturally adjusted criteria for indigenous land uses and requested the report be submitted to the Permanent Forum at its eleventh session, in May 2012.

* E/C.19/2012/1.

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I. Introduction

1. Reindeer pastoralism represents models in sustainable exploitation and management of Arctic terrestrial ecosystems that are based on generations of experience accumulated, conserved, developed and adapted to the climatic and political/economic systems of the North. Reindeer have major cultural and economic significance for indigenous peoples of the North. The human-ecological systems in the North, like reindeer pastoralism, are sensitive to change, more than in any other region of the globe, owing to the variability of the Arctic climate and the way of life of Arctic indigenous peoples. More than 20 indigenous groups are reindeer herding peoples. Reindeer husbandry is practised in Alaska, Canada, China, Finland, Greenland, Mongolia, Norway, the Russian Federation and Sweden. It involves some 100,000 herders and 2.5 million semi-domesticated reindeer.

2. World reindeer herders, owing to their experience, traditional knowledge and skills, have developed unique management strategies for the protection of pastures, observation of changes and the rational use of the natural resources. Reindeer herders should have the right to determine their own future, based on their own philosophy of life and understanding of the world. They should also be consulted, included and accepted as partners when development, research and monitoring take place on their territories. For many indigenous peoples, reindeer represent their cultural, economic, social and spiritual foundation. The intimate connection between humans and animals is perhaps best embodied by this relationship, as reindeer husbandry represents a connection ancient in origin and practised almost identically wherever it is found.

3. Recent reports by John B. Henriksen[1] and Lars-Anders Baer[2] have focused on climate change and its impacts in the Arctic on reindeer herding. In 2009, the Special Rapporteur on the Rights of Indigenous Peoples also reported on the critical conditions related to the loss of grazing land for Sami reindeer herders in Finland, Sweden and Norway. The Permanent Forum has also made recommendations that States must ensure that transnational corporations and other business enterprises on indigenous peoples' traditional lands comply with the specific standards contained in the United Nations Declaration on the Rights of Indigenous Peoples and the International Labour Organization Convention No. 169 concerning indigenous and tribal peoples in independent countries, 1989. According to Magga and others, the future for reindeer herders' communities is dependent on reindeer herders' use of traditional knowledge and integrating scientific knowledge when considering risks as well as the diversity of reindeer herders and their social organizations and economies, and understanding biological diversity and the flexible use of pastures.

4. The International Polar Year EALÁT (Reindeer Herders Vulnerability Network Study) Outreach Reindeer Herding and Climate Change in cooperation with the Association of World Reindeer Herders held a side event at the Permanent Forum in May 2011 based on the report of the Arctic Council. Recommendations from the

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[1] "The impacts of climate change and accelerated threats on traditional knowledge, innovations and practices: the specific vulnerabilities of indigenous and local communities of the Arctic, small island States and high altitudes", prepared for the secretariat of the Convention on Biological Diversity (2007).

[2] Study on the impact of climate change adaptation and mitigation measures on reindeer herding (E/C.19/2010/15).

side event included (a) an urgent need to implement international laws on the rights of indigenous peoples in domestic and local legal systems, and to ensure not only formal equality but also equality in practice of indigenous peoples' rights to lands, territories and resources; (b) a need to undertake a study on the impacts of land-use change and climate change on indigenous reindeer herders' economies and land management; (c) a need to increase reindeer herders' capacity in negotiating with developers competing for their grazing land in public or private industrial development and having access to free legal advice; and (d) a need to increase the transparency in decision-making concerning land use and resource exploration and exploitation.

II. Taiga and tundra reindeer husbandry

5. The 1600s marked a transformation of indigenous reindeer economies as competing nation States began a process of colonizing indigenous peoples by encroaching on their lands and utilizing their resources in the Arctic. For some, this represented an opportunity as reindeer herds grew to feed the growing markets. Russian expansion into the vastness of Siberia in search of fur was enabled by reindeer as both food and transportation. Today, there is a difference between tundra and taiga reindeer husbandry. Tundra refers to long migrations in the summer to coastal or mountain areas to flee insects and access better pastures. Winter marks a return inland to shelter, a more stable climate and a change in diet. Herds tend to be large, up to several thousand and migration routes are long, often many hundreds of kilometres. With a focus on meat production, this type is practiced by Sami, Nenets, Komi, Eveny, Chukchi and Koryak. Taiga reindeer husbandry is geographically widespread, and is characterized by smaller herds, by riding the animals, and much shorter migration routes in forested or mountainous areas. Animals are primarily used for transportation and milk production.

III. Climate change and reindeer husbandry

6. According to Oskal and Magga, climatic and socio-economic change are now evident across the Arctic, and particularly in reindeer herding cultures and in their traditional areas.[3] Global and regional scenarios project dramatic changes in temperature, precipitation and snow conditions in the key areas for reindeer herding and in social-economic changes for reindeer herding communities in the Arctic. Climate scenarios indicate that winter temperatures in Finnmark, Norway, and the Yamal Nenets Autonomous Okrug, Russian Federation, may increase by 7°C to 8°C in 100 years. The largest temperature increase is projected mainly for the inland, but warming is expected for the Yamal peninsula in the Russian north. Future scenarios indicate that Yamal Nenets Autonomous Okrug winter temperatures in the period from 2070 to 2100 may be comparable with inland Finnmark winter temperatures

[3] Anders Oskal and others, *EALÁT Reindeer Herders' Voice: Reindeer Herding, Traditional Knowledge and Adaptation to Climate Change and Changed Use of the Arctic*, Arctic Council Sustainable Development and Utilization Working Group EALÁT-Information Ministerial Report, International Centre for Reindeer Husbandry and Association of World Reindeer Herders. International Centre for Reindeer Husbandry Report No. 2 (2009).

during the period 1961 to 1990. Inland temperatures in Finnmark, Norway, may also resemble those of the coastal area of Finnmark (Nordreisa) today.

7. Indigenous traditional knowledge, culture, and language provide a central foundation for adaptation and resilience to the rapid changes in the Arctic. Reindeer herding cultures and traditional knowledge are inevitably affected by institutional governance, economic conditions and other regulatory practices and conditions. Both scientific and traditional experience-based knowledge, knowledge transformation and the education and training of future leaders are key factors for the future sustainability of reindeer herders' societies. Engaging reindeer herding youth directly in herding practices and providing enhanced education is a key factor in the future sustainability of reindeer husbandry and its cultural foundations. A vision of a self-sustained and adaptive reindeer community in the circumpolar North is increasingly faced with rapid climate change, regulatory challenges, and altered or degraded pasture lands. Addressing climate change in reindeer herding societies might require novel methodological approaches. Recognizing the ability to adapt to change, as demonstrated by reindeer herding, is based on knowledge embodied in the language, the institutions of pastoralism and the knowledge and actions of individual herders, which should also be documented, analysed and combined with data in the social and natural sciences.

IV. Land use change and reindeer husbandry

8. It is important to recognize that reindeer nomadism is a highly extensive form of land use. The degradation of pasture lands, combined with the consequences of a changing climate, presents substantial challenges to the future of reindeer husbandry.[4] For herders, the principal issue is the securing of the habitat and landscapes in which to graze their reindeer in different seasons and conditions. Indeed, the progressive and effectively irreversible loss of the uncultivated lands that reindeer use as pasture is probably the single greatest threat to reindeer husbandry in the circumpolar North today. The preservation of rangeland is, likewise, perhaps the single greatest priority for sustaining the resilience of reindeer herding confronted by changes owing to climate change, and the socio-economic environment. It is important to recognize the special rights of indigenous reindeer herding peoples to their traditional living areas, and that these rights also include the right to land use, management, protection and natural resources.

9. Mattias Åhrén, President of the Saami Council, on the occasion of the sixth Ministerial Meeting of the Arctic Council, held on 29 April 2009 in Tromsø, requested States to consider indigenous territories in their claims to natural resources in the Arctic. Likewise, the International Polar Year EALÁT pointed out that the ability of reindeer herders to adapt to climate change would be jeopardized by industrial development and would impact on the nature-based livelihoods of indigenous peoples.

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[4] Ingunn Vistnes and others, *Reindeer Husbandry and Barents 2030: Impacts of Future Petroleum Development on Reindeer Husbandry in the Barents Region*, report for StatoilHydro Barents 2030 Scenario Programme, International Centre for Reindeer Husbandry Report No. 1 (2009).

V. Reindeer herding: case analysis

A. Sápmi Norway, Finland and Sweden

10. During the nineteenth and twentieth centuries, the traditional areas of Sami reindeer husbandry were divided between the borders of four nation States: Norway, Sweden, Finland and the Russian Federation. Approximately 6,500 Samis work as reindeer herders in Scandinavia. Reindeer husbandry in the Sápmi region is characterized by larger herds in Norway and Sweden and a high degree of mechanization. Reindeer are primarily used for their meat production, though hides, bones and antlers are an important source of material for clothing and handicrafts. Recruitment to the industry has been limited in Norway and Sweden by legislation, and a lack of pastures and economic opportunities has limited the expansion of the livelihood.

11. Today the high north strategy of Norway includes the development of new industrial projects such as mining, offshore oil/gas extraction, green energy and tourism in the regions traditionally used by Sami people. It is important to provide information and insights on how resource conflicts could be avoided by including local Arctic societies and right holders such as reindeer herders at the early planning stages in any industrial development. Facing the new industrial development of the Arctic, there is a real danger that the benefits from industrial development will only be awarded to mainstream society, while indigenous peoples will bear the costs. Further, these industrial projects were planned at the same time when it was officially decided to decrease the numbers of reindeer and reindeer herders in Finnmark county of northern Norway. That decision was based on the need to maintain sustainable reindeer husbandry. Furthermore, Norway has not yet developed climate change adaptation strategy plans for Sami reindeer husbandry, which might result in decreasing the herders' vulnerability to future changes. It therefore raises questions as to whether the research and education methods about reindeer herding in Norway, which were applied over the past 30 years, are now adequate to deal with the new challenges in the Arctic.

12. Sami reindeer herders in Norway should be able to meet the global challenges at a time when various national and global actors are able to coordinate their goals and strategies in the herders' pasture areas. Reindeer pastoralism must be empowered to face the effect of global changes in the Arctic. New educational programmes that take into account Arctic culture, resilience, sustainable development, climate change and insights into indigenous peoples' societies and languages should be developed. Future training of Arctic leaders might be one way to avoid conflict between herders and developers and respect the reindeer societies' basic need for survival.

13. In Finland, reindeer husbandry is not ethnically restricted to Sami and the livelihood is open to any individual from the European Union. In total, there are approximately 5,600 reindeer owners, the vast majority of whom are Finns. The reindeer husbandry area in Finland lies in the most northerly parts of the country and covers almost the entire area of the Province of Lapland and part of the Province of Oulu. The reindeer husbandry area covers 114,000 km^2, which is 36 per cent of the entire surface area of Finland. The northernmost part of the Finnish reindeer husbandry region is classified as the "Sami reindeer herding area", where Sami reindeer husbandry is concentrated. Reindeer herding is administered through

a reindeer cooperative system of which each reindeer owner is a member. The current maximum number of reindeer in Finland has been set at 200,000, with individual ownership restricted from between 3 and 500 reindeer, depending upon location.

14. Two contradictory trends can be traced in global resource politics, which is also reflected in Sweden. On the one hand, there is a growing global acknowledgement of the indigenous territorial and resource rights and the recognition of those rights for all indigenous peoples, including the Sami. It also includes the recognition of the continued survival of traditional land uses, such as reindeer herding. On the other hand, there is a dramatic increase in extractive activities and infrastructure projects on traditional indigenous lands, owing to and including rising global commodity prices, energy demands, changing climate policies, and population increases. As the situation currently stands, the last remaining Sami reindeer herding lands are being fragmented, piece by piece, by forestry, wind-power parks, mining projects and hydropower developments.

15. While Sweden is generally highly regarded for its respect for and advocacy of human rights and indigenous peoples' rights abroad, Sweden has received ongoing criticism from the United Nations for not acknowledging Sami resource rights at home.[5] Given this governance gap, and the lack of protection of Sami rights by the Swedish State, increasing attention is being paid to the responsibilities that corporations must bear for their activities. This is often mediated through discourses of corporate social responsibility. Implicit in the concept of corporate social responsibility is the idea that corporations should go beyond what is required by national laws. There are few companies in Sweden going beyond the law in terms of recognizing Sami rights. In short, corporate social responsibility practices in Sweden remain undeveloped. Moreover, while there are some (limited) positive examples of companies going beyond the law, these same companies have reported that other companies have pressured them not to go beyond the law, for fear that it would "raise the bar" for the industry as a whole. Undoubtedly, there is much room for development in Sweden for better corporate social responsibility practices, yet corporate social responsibility can never be the single solution to the question of indigenous rights. Corporate social responsibility is a double-edged sword: it encourages companies to go beyond the law, but this is only ever voluntary. Better corporate social responsibility practices also need to be matched with a stronger national legislation and regulation concerning Sami rights.

16. The fact remains that national legislation and regulation in Sweden is lacking, and many Sami communities, alongside non-governmental organizations such as the Saami Council and the National Swedish Sami Association, have sought to make corporations accountable for respecting Sami rights, even if the State will not. First, Swedish corporations operating in Sweden generally perceive corporate social responsibility issues, including human rights and indigenous rights, to be primarily the concerns of the developing world, such as Africa or South America. Rarely do Swedish companies accept that indigenous rights should be a relevant concern for their Swedish operations. What might be described as a Swedish sense of "self-

[5] See, e.g., the report of the Special Rapporteur on the rights of indigenous peoples on the situation of the Sápmi region of Norway, Sweden and Finland (A/HCR/18/35/Add.2), paras. 46 and 47. See also Nigel Bankes, "Legal systems" in Arctic Council, *Arctic Human Development Report* (2004).

righteousness" (*självgodhet*) blinds Swedish companies to the fact that Sweden does not currently live up to international standards and norms on indigenous rights. A similar "blind faith" can also be witnessed with foreign companies operating in Sweden, particularly in the exploration and mining industry. For example, Australian and Canadian companies commonly place an enormous amount of trust in the Swedish Government and Swedish authorities to "deal with Sami issues". Secondly, many Swedish companies, particularly in the mining, forestry and hydropower industries, have played an active role in the colonization of Sami lands and the dispossession of Sami from their traditional territories. This is not something that is generally recognized or spoken about within these industries. In other words, no acknowledgement is given to the historical and ongoing industrial colonization of Swedish Sápmi by the resource industries. Thus, companies commonly perceive their activities as justified because they have a State permit. But they fail to recognize that the planning processes by which they have acquired a State permit marginalize Sami interests and do not guarantee the protection of Sami rights. Thirdly, structural discrimination and racial prejudice against Sami people continue to persist in both the private and public sectors in Sweden.[6] This constrains the opportunities of the Sami people to influence the planning processes and resource projects affecting their traditional lands and resource rights.

B. Yamal, North-west Siberia

17. The Nenets live mainly in the tundra, forest tundra and northern taiga belt of Europe and western Siberia from the Kanin Peninsula in the west, to the Gydansk-Peninsula of the Yenisey delta. They form the largest indigenous group of the Russian north and are one of the world's biggest reindeer herding peoples. The bulk of Nenets reindeer husbandry is situated on the Yamal Peninsula, which is the world's largest area of reindeer husbandry. Reindeer are used for meat production, clothing, traditional handicraft production and transportation. Reindeer are central to the social, cultural, spiritual and economic life of the Nenets.

18. Land, including pasture quality and availability, is the main concern for the Yamal reindeer herders, who still exercise their traditional nomadic livelihood, migrating with reindeer up to 1,000 km a year. The problem of land use change in Yamal might be divided into several dimensions, namely (a) land use change owing to industrial development of natural resources; (b) different legal status of lands used by herders in the one-year cycle of their migration; and (c) the discrepancies in the rights to land attached to the organizational status of reindeer herders.

19. Industrial development of hydrocarbon resources in the Yamal-Nenets region Autonomous Okrug has played a key role in energy well-being of the Russian Federation. The region provides 90 per cent of Russian Federation gas production and there is no alternative to opening the Yamal Peninsula reserves to support the current level of gas production. The project development of Yamal hydrocarbon reserves includes the development of railways and pipelines, drilling facilities, housing for newcomers in the industrial areas and other infrastructures connecting the Tambey, Bovanenkovo and South groups of oil and gas fields. Until recently, the peninsula had no transport and other infrastructure, but will now have facilities for

[6] http://www.do.se/Documents/Material/Gamla%20ombudsm%c3%a4nnens%20material/discrimination-of-the-Sami.pdf.

the drilling, extraction and transportation of oil and gas. For reindeer herders, such activities cause direct pasture loss and decrease in pasture quality in the areas around the industrial objects. Although the physical footprint of oil and gas production and transportation infrastructure might take less than 1 per cent of the territory, the industrial development has a strong impact on the system of traditional migration patterns. Some families have to move to new pastures and feel they have lost their homelands.

20. The different legal status of lands used by herders in the annual cycle of their migration complicates obtaining official permission for land use. Traditionally, the winter pastures of many reindeer herders from the Yamal peninsula are located in the forest zone across the Ob bay in the Nadym municipality. According to Russian law, the forests which are the winter pastures are under federal jurisdiction and can be licensed out for the maximum period of five years. While the tundra zone, which is the spring, summer and autumn pastures, is under the regional jurisdictions, it is the authorities of the Yamal-Nenets Autonomous Okrug who manage the land use and have the right to license these territories out for the maximum period of 25 years. These disproportionate rental times and the application of different legal regimes make it difficult for reindeer herders to establish the full and official permissions to use the land that is needed in the one-year cycle of nomadic migration.

21. The discrepancies in the rights to land attached to the organizational status of reindeer herders are the biggest potential threats for traditional reindeer herding land use. Currently reindeer husbandry is organized in three structures: (a) large reindeer herding enterprises (the former Soviet State agricultural organization), which are the official pasture land users; (b) private herders, who are organized as legal entities called communities (or *obshchiny*), which inform the State about the pastures they are using; (c) private herders (so-called individual households), who are not a part of any legal entity. Currently, private herders do not have a legal right to use the pasture lands for their traditional livelihood, since pastures in Yamal municipality are officially rented by large reindeer-herder enterprises. In the Yamal-Nenets Autonomous Okrug, there is a political understanding of the customary right to land as there is no legal prohibition or restriction for any reindeer herder to use the pastures. The immediate legal implication for private herders is their lack of involvement in and lack of information about industrial activities on their traditional pastures. In Yamal, the private herders are more vulnerable to both the loss of grazing land to the rapid industrial development and the change in political will towards controlling and restricting reindeer husbandry with respect to pasture use and the number of reindeer.

C. Republic of Sakha (Yakutia)

22. The Republic of Sakha (Yakutia) is the largest region of the Russian Federation, with territory covering one fifth of the Federation. With such a vast size, reindeer herding is as diverse as the region itself. The Republic of Sakha (Yakutia) includes high Arctic, subarctic, mountain-taiga and taiga ecosystems. Five distinct indigenous peoples herd reindeer in Sakha: Eveny, Evenki, Dolgans, Yukagirs and Chukchi. Twenty-five per cent of the entire Republic is considered as reindeer pastures, although it has been estimated that there are more lands in the Republic that could potentially be used as grazing lands for reindeer, signifying its potential

for growth.[7] The vast majority of reindeer pastures and potential pastures are in the forestry zone of the Republic.[7] This is important as according to Russian legislation, the forestry lands are under Federal management, while lands that are designated as agricultural are under the management of the local authorities.

23. Currently there are over 200,000 reindeer herded by over 2,200 people who work and migrate with reindeer on a full-time basis. Reindeer are owned primarily by various State and public bodies, although nearly 10 per cent are held privately.[8] There are a wide variety of subsidies that are provided to herders by the regions in areas that include increased livestock, transportation and education.

24. In the Republic of Sakha (Yakutia), 80,437.2 thousand hectares of land, or 25.8 per cent of the total area of the Republic, are accounted by the land cadastre authorities as reindeer pastures. However, the same authorities recently recognized that there are more lands in the Republic that potentially could be used as grazing lands for reindeer,[7] while the category "reindeer herding land" does not exist as such in the official land classification, but there are "forestry fund land" and "land of agricultural designation".

25. In Yakutia, the most significant areas of reindeer pastures are located in the forests and include 75 per cent of pasture lands, 15 per cent of agricultural lands and 9 per cent are protected areas.[9] According to Russian legislation, the forestry lands are under the federal management, while lands of agricultural designation are under the management of the local authorities.

26. The neighbouring district of Olenek is now becoming important in the development of the diamond industry. The Prime Minister of the Russian Federation has recently signed the decree on license rights to the new diamond deposit, Verkhne-Munskoe, in the middle of Olenek region.[10] For both Anabar and Olenek districts, the problem of wild reindeer grazing and their migration routes is most challenging. During the 1990s, many domestic reindeer were lost and lured away by the wild reindeer belonging to the Bulun, Leno-Olenek and Taimyr populations. This also represented a loss of reindeer herding pastures owing to climate change as well as changes in the wild deer populations, which had been controlled during the Soviet times. The routes of wild reindeer migrations have also changed and become unpredictable. At an EALÁT workshop in Anabar and Olenek, the participants drew attention to an urgent need to develop monitoring systems on the migrations of wild reindeer and to preserve traditional knowledge.

27. An EALÁT workshop was also held in the settlement of Topolinoe in the Tompo region, the eastern economic district of Yakutia where there are plans for industrial development. It is related to the implementation of the so-called Tompo mining district investment project designated in the Scheme 2020. This project includes the extraction of natural resources of gold, wolfram, copper and steam coal. The effects on indigenous peoples in the area and their traditional land use were completely ignored in the project. No assessment of the potential environmental damage and the withdrawal of reindeer pastures was made, nor was any compensation for the possible losses considered.

[7] National report, 2009.

[8] Ministry of Agriculture of the Republic of Sakha (Yakutia), 2010.

[9] State National Report, 2009.

[10] Russian International News and Information Agency (RIA Novosti).

28. Among the three projected industrial areas, the most intensive industrial development is already happening in the southern economic district of Yakutia. This region is a home to more than 4,000 Evenki, Eveny and other indigenous reindeer herders involved in a very special type of taiga reindeer husbandry as well as more than 60 nomadic *obshinas* and few States, collective and municipal reindeer herding enterprises. In this area reindeer pastures, hunting and fishing grounds are used by reindeer herding units and communities of Aldan, Olekma and Neryungri *ulus*.

Integrated development of Southern Yakutia

29. The plans for regional development will cause a reduction in reindeer pastures as well as their fragmentation and degradation. The participants of workshops held in Southern Yakutia were concerned with the industrial development of their territories, in particular with the reduction of reindeer pastures, environmental degradation and the lack of dialogue between herders and industrial companies. The herders reported that their interests were not taken into consideration when making decisions regarding the development of the area. For example, the reindeer-herding community of Idzhek has repeatedly appealed to RusHydro company to take the herders' interests into account when designing and constructing the Cancun hydropower plant. The winter pastures of the community are in the area of the proposed hydroelectric dam and it is expected they will be flooded by the dam. However, no formal response was received either from the company or from representatives of the Government.[11]

30. Owing to industrial development moving into the reindeer pastures, there are challenges for reindeer herders, such as disturbance for animals, loss of pastures, degradation of land, loss of biodiversity and poaching of reindeer, which limits their coping and adaptation strategies. Climate change and globalization are also important drivers that affect reindeer herding. At the same time, economic development of the region brings some prospects and opportunities for reindeer herders, such as the development of reindeer meat markets, access to transportation and communication infrastructure and social services. The challenge is to balance the impacts and prospects that development brings to reindeer herders.

D. Baikal region

31. The Baikal region covers the territory of the drainage basin of Baikal and includes three subjects of the Russian Federation (Republic of Buryatia, Zabaykalsky Krai, and Irkutsk Oblast). The use of the term "Baikal region" is relatively recent. Previously, the standard terms used in regional economics were "Pribaikalye" (an area adjacent to Baikal of the Irkutsk Oblast) and "Zabaikalye" (a part of the Republic of Buryatia and Zabaykalsky Krai). The total area size of the Baikal region is 315,000 km^2. From ancient times, this area was home to indigenous peoples (the Evenki, the Tofalars, and the Soyots) practising the taiga type of northern reindeer herding.

32. Owing to the national policy of the Government, the Soyots (the Okinsky District of the Republic of Buryatia) completely lost the practice of reindeer herding. In 1963, reindeer herding in Okinsky District was declared unproductive

[11] Results from the EALÁT workshop, held in Khatystyr in 2009.

and eradicated, which led to an irrevocable loss of the valuable gene pool of the domestic animal. Towards the end of the 1980s, the community, with the support of the district administration, decided to restore reindeer herding. Reindeer were bought in the Nizhneudinsk region of the Irkutsk Oblast; however, during the intervening years the Soyots had lost all knowledge of reindeer herding. As at 1 January 2011, only the closed joint stock company "Erbyek" is engaged in reindeer herding and maintains 22 reindeers.

33. The Government has been inattentive to reindeer herding as a sector of traditional economic activity, and the organizational issues such as economic and livestock-veterinarian problems were poorly solved. Thus, in the Soviet years the reindeer were kept by the *kolkhoz* (collective farms) and *solkhoz* (State-farms), there was a loss of interest in reindeer herding owing to the decrease in cargo transportation and geological expeditions for industrial needs were no longer hired. Reindeer herding became subject to the effects of the Soviet crisis period, which led to a very difficult situation. The fall in the northern domestic reindeer population ensued as result of a decrease in governmental support of northern *kolkhoz* and *solkhoz*, the low subsistence level, the weak adaptability by the indigenous peoples of the North to the quickly changing market circumstances of the economy and the low level of commodity production in reindeer herding and marketability.

34. At the beginning of 2004, there was a small rise in the domestic reindeer population of the Baikal region. This was largely promoted by the State as an approach to the problems of reindeer herding adopted by State powers, and also because of measures taken in the sphere of agriculture and agriculture product market regulation. In order to provide governmental support to northern reindeer herding from the budget funds, certain measures were taken, such as adjusting the accountability of reindeer economies and organizing subsidies.

35. In spite of the measures taken in resolving the issues of reindeer herding some problems of taiga reindeer herding in the region still remain. Over the years no improvements were made in the breeding and productive qualities of the reindeer. Secondly, the indigenous peoples' communities have no fixed territories and reindeer grazing fields. All reindeer grazing fields are located within forested areas that are in federal possession, and the area unit usage rent is very high. Thirdly, reindeer herding as a sector of the agricultural economy does not exist in the agricultural register of the Irkutsk Oblast. Fourthly, there is a lack of regional laws and economic programmes that support and help develop reindeer herding. Fifthly, reindeer herding is greatly damaged by predators (wolves). Sixthly, there is the issue of the development of the traditional territories of the indigenous peoples by the mining, gas and oil industries, and the building of the Baikal/Amur railway and road, resulting in deforestation. The threat to the future of the taiga reindeer herding in the Baikal region is evident. Furthermore, the territories of the traditional habitat of the indigenous peoples, and the places of their traditional way of life, may be subject to the development of new minefields and industrial companies. The reindeer grazing fields and the camping areas of the reindeer herders will be negatively affected by industry. The Strategy for Social and Economic Development of the Far East and the Baikal region up to 2025, adopted by the Government of the Russian Federation, is aimed at speeding up the growth (on an innovative basis) of the economic potential of that part of the country in order to realize the interests of the Russian Federation in the Asia-Pacific region. The Strategy assumes a total use of the natural resources of the region.

E. Sakhalin

36. Reindeer herding in Sakhalin has twice been subjected to forced and acute changes from the Government; however, the most drastic change is happening on the current stage. According to research, reindeer herding came to Sakhalin at the end of the sixteenth century and beginning of the seventeenth century along with reindeer herders, the Evenki, who migrated from the mainland. The reindeer population was at its highest in the 1960s and 1970s, the peak period in the development of the collective economy of the Ul'ta and the Evenki. Until 1985 the herd of the domestic reindeer consisted of 15,000 to 18,000 head, however, that number had greatly decreased, eightfold to tenfold, by the 1990s. The process of the significant decrease in the population of domestic northern reindeer began in the 1990s. In 1991, 4,000 head were counted in total in all categories of the economies (collective and private) of the region, and 1,788 head in 1999. In the last 10 years, only one enterprise has engaged in domestic reindeer herding in the Sakhalin Oblast, and that is the national corporation "Valleta". According to the data of the president of the development corporation, there are now 164 reindeer in his management. The industrial oil and gas production that became widespread at the end of the 1950s in the Nogliksky District has in part affected the regress of the Ul'ta reindeer herding. In the 1970s and 1980s, some areas of land were used for developing oilfields and pipelines, as well as for building railway lines, without any consent or compensation to the communities. All grazing field areas in the village of Nogliki to the settlement of Val were taken away from the reindeer herders and this territory was equipped with oilfields belonging to the company "Sakhalinmorneftegaz". Currently, the reindeer herding situation remains very problematic. The development of oil and gas on the Sea of Okhotsk shelf by foreign and domestic companies, as well as the activities of coal mining, construction of land terminals and pipelines, have affected reindeer herding. Poaching, the feralization of the domestic reindeer, the increasing number of predators (wolves), massive deforestation, a decrease in the number of reindeer moss, high rent for northern reindeer herding, at 5.35 rubles per hectare on forest area units and many other reasons have also led to the catastrophic situation of reindeer herding in Sakhalin.

F. Mongolia

37. Domesticated reindeer herding in Mongolia takes place along the borders of the Russian autonomous republics of Tuva and Buryatia, on the south slopes of the Sayan Mountains. The Dukha system of reindeer husbandry is unique in that it operates on the edge of the transition between taiga and the steppe biomes, on the edge of a reindeer's natural habitat. The herders are Dukha people, the smallest ethnic minority in Mongolia. Their herding traditions are believed to be ancient. Some scientists believe that it was in the Sayan Mountains that the domestication and herding of reindeer first started several thousand years ago. The Dukha population presently includes approximately 200 nomadic reindeer herders and some 300 people who have adopted a more settled lifestyle in the sum centre. Dukha reindeer husbandry is characterized by small-sized herds and highly nomadic management, although the current herds are below a sustainable level. About 40 families herd a total of approximately 1,500 reindeer. Today, herding families

typically own between 20 and 150 reindeer, although some own as few as 5, while a sustainable number would be 50 to 70 reindeer per family.

38. Traditionally, the Mongolian taiga reindeer herders had small reindeer herds, and the animals were primarily used for transportation and milk production and occasionally slaughtered for consumption. Currently, hunting is an important part of the Dukha herders' livelihood. Wild game is the primary source of meat and protein to the Dukha, and the fur and skins were exchanged for other goods. A field study conducted in June 2011 provided information on the current challenges for securing Mongolian reindeer husbandry for the future. Many of the challenges were related to the precarious socio-economic situation of reindeer herders within a market economy. Since the 1990s, governmental subsidies for salaries and other services have disappeared after 70 years of a communist regime, and the need for cash income to buy essential services has increased in this formerly subsistence community. The market economy, combined with increasing compensation for the land, has impacted the reindeer herders' land use. Further, the Dukha people have no community members in elected positions at any level of government. They have limited access to legal counsel and information regarding civil and human rights, and have no formal ownership or possession of the taiga; all these factors make them vulnerable to exclusion and exploitation.

39. In 2011, the Office of the United Nations High Commissioner for Refugees reported that the Dukha people faced widespread societal and institutional discrimination and human rights violations within Mongolian society. The United Nations Educational, Scientific and Cultural Organization *Red Book on Endangered Languages* lists the Mongolian reindeer herders' Tuvan language as seriously threatened. The reindeer herders interviewed argued that only teaching the children the Tuvan language would secure the indigenous knowledge of the reindeer herding culture and secure the recruitment of a next generation of herders.[5] In addition to being the home of the Dukha reindeer herders, the Mongolian taiga is also a globally significant region. As the taiga is also rich in natural resources and a highly rated tourism destination, the herders and the biodiversity are increasingly affected by gold miners, forest loggers and taiga tourists. This situation requires urgent national and international attention and action for strengthening the traditional livelihood of reindeer herders, restoring the ecosystems and the protection of a number of endangered species. The Dukha reindeer herders have shown resilience over many years by adapting to changing governance regimes, such as the establishment of national borders cutting through migration routes, the collectivization of reindeer herds and the transition to a market economy. Their herd size has fluctuated, but the herders have until now always been able to increase the number of reindeer after a crisis. However, there are limits to the herders' capacity for adaptation. There is an urgent need to secure reindeer husbandry as a resilient and sustainable livelihood and further, to ensure that the Dukha reindeer herders are able to maintain their cultural identity and rely on nature for their livelihood and well-being, and control their own destiny.

VI. Conclusion

40. Rapid industrial development, combined with social, economic and climate change and variability, are creating major challenges for the indigenous reindeer herder communities in the Arctic. Indigenous adaptation is strengthened by active

practice of traditional knowledge accumulated through generations of reindeer herders. Indigenous peoples' interest and their knowledge should be considered at the early stages of industrial development. There is also an urgent need to implement international laws on the rights of indigenous peoples and ensure their rights to lands, territories and resources. This includes recognizing herders' use and management of grazing land by identifying cultural practices for indigenous land use. There is a need to increase the transparency in decision-making concerning land use and resource exploration and exploitation in the Arctic and access to free legal advice regarding development issues. There is increased marginalization of herders when they do not benefit from industrial development, or when cultural values are not recognized and local codes of conduct are ignored. There is also a need for new mechanisms replacing impact assessments relating to the extraction of energy resources in the Arctic so that small Arctic societies are respected and included in any development process. Reindeer herders' rights have to be considered in view of any Arctic governance opportunities and international cooperation that facilitates stronger corporate social responsibility by the companies involved. Reindeer herders' sustainable small business must be included in the discussions during the process of development in the Arctic.

VII. Recommendations

41. It is recommended that States of the Arctic support private reindeer herding as a key foundation for the development and maintenance of sustainable reindeer husbandry.

42. It is recommended that the Arctic Council establish a "Reindeer herders' watch", which would be a tool for monitoring changes in reindeer pastures that includes a yearly report on changes in reindeer herding.

43. It is recommended that Arctic States recognize nomadic reindeer herding as a unique and incomparable indigenous livelihood and that nomadic indigenous livelihood and economy requires special attention and protection in the future owing to rapid changes in the Arctic.

44. Arctic States and private industry need to support the establishment of new institutional mechanisms based on reindeer herders' knowledge, rights and world views that secure the ability of reindeer herders to negotiate with industrial developers on an equal footing. Further, it is recommended that legal advice information about the effects of industrial development be provided and that there is development of new juridical tools to support these institutional mechanisms to avoid future conflicts.

45. Arctic States and industrial developers must recognize the integrity and holistic view of the use of reindeer pastures that is based on herders' traditional knowledge.

46. Fishing is an important part of the economy of indigenous reindeer herding people living a traditional nomadic life, and therefore, industrial development should be restricted in the waterways.

47. The Russian Federation should integrate special amendments into the federal legislation of the forest and land codes to provide the land for traditional economies, including reindeer husbandry.

48. It is recommended the Government of the Russian Federation, the State Duma and the Council of the Federation make it easier and practicably possible to register traditional grazing lands, based on the principle that reindeer herders can use pastures free of charge.

49. It is recommended that the Global Environment Facility be urged to fully endorse the UNEP project entitled "Enhancing the resilience of pastoral ecosystems and livelihoods of nomadic herders" (Nomadic Herders Project), coordinated by the International Centre for Reindeer Husbandry and GRID Arendal.

50. It is recommended that Arctic States fully implement the Arctic Council project Eallin, "Reindeer-herding youth", led by the Association of World Reindeer Herders and the Russian Federation.

51. It is recommended that industrial developers in the Arctic respect the results from public hearings related to industrial development in reindeer herders pasture land and the results be mandatory for those authorities who consider commercial development in the territories where traditional nature use occurs.

52. It is recommended that Arctic States and industrial developers be urged to improve the standards used in impact assessments and agreements with reindeer herders so that they take into account the structure and knowledge of nomadic societies and the cultural base for pasture use and to include herders in the process as early as possible to avoid conflicts.

53. It is recommended that Finland accept the legal status of, and provide special protection to, Sami reindeer husbandry in Finland.

54. It is recommended that the Arctic Council be urged to investigate if the loss of grazing land does affect the reindeer herders' indigenous cultures.

55. It is recommended that Arctic States take the steps necessary to identify the lands that reindeer herding peoples traditionally occupy, and to guarantee effective protection of their rights of ownership and possession and to continually monitor land use changes in such areas.

56. It is recommended that the Arctic Council:

(a) Initiate a project to identify reindeer pastures, monitor land use changes and report annually on land use change as well as secure the status of reindeer pastures, taking into account the customary rights of indigenous peoples;

(b) Implement tools that monitor the migration of wild reindeer and regulate their numbers;

(c) Create an education system in the traditional economic activities of indigenous peoples, and develop conservation projects that document traditional knowledge, language and culture.

57. It is recommended there be secure education opportunities for reindeer herding youth, both in terms of locally based education programmes and in terms of funding options. As the system of education of reindeer herders cannot exist outside of a nomadic way of life, it is very important to develop educational institutions and adaptive models of education that are suited to the specific needs of reindeer herders and their families in particular, such as nomadic schools and distance learning systems.

58. It is recommended that relevant United Nations agencies be urged to support the Arctic Lavvu Dialogue between industrial developers in the Arctic and circumpolar reindeer herders.

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Information received from entities of the United Nations system and other intergovernmental organizations

World Intellectual Property Organization

Summary

The present note, submitted by the secretariat of the World Intellectual Property Organization (WIPO) for consideration at the in-depth dialogue of the eleventh session of the Permanent Forum on Indigenous Issues, is a concise summary of the action undertaken or planned by WIPO regarding indigenous peoples' issues.

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I. Introduction

1. At its tenth session, held from 16 to 27 May 2011, the Permanent Forum on Indigenous Issues adopted two recommendations specifically addressed to the World Intellectual Property Organization (WIPO):

> "The Permanent Forum welcomes the World Intellectual Property Organization facilitating a process, in accordance with the Declaration, to engage with indigenous peoples on matters including intellectual property, genetic resources, traditional knowledge and folklore.[1]
>
> "The Permanent Forum recognizes the right to participate in decision-making and the importance of mechanisms and procedures for the full and effective participation of indigenous peoples in relation to article 18 of the United Nations Declaration on the Rights of Indigenous Peoples. The Forum reiterates that the United Nations Framework Convention on Climate Change, the Stockholm Convention on Persistent Organic Pollutants, the Convention on Biological Diversity, the World Intellectual Property Organization and the International Maritime Organization should facilitate indigenous peoples' participation in their processes."[2]

2. In this note, WIPO would like to draw attention to: (a) recent developments in the negotiations being undertaken by its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore; (b) mechanisms to facilitate the participation and contribution of indigenous peoples and local communities in the work of the Intergovernmental Committee; and (c) capacity-building and awareness-raising initiatives that have been undertaken by WIPO in 2011.

II. Status and renewed mandate of the norm-setting work

3. The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore was established in 2000 and is currently undertaking text-based negotiations for the effective protection of traditional knowledge and traditional cultural expression and to address the intellectual property aspects of access to and sharing of benefits from the use of genetic resources.

4. The WIPO submission to the tenth session of the Permanent Forum (May 2011) reported on the sessions of the Intergovernmental Committee held since the adoption of its mandate for the biennium 2010-2011, including the fifteenth, sixteenth and seventeenth sessions, which took place in December 2009 and in May and December 2010, as well as the first session of the Intersessional Working Group in July 2010. The focus of work at all of the sessions was on the issue of traditional cultural expression.

5. Under its mandate for 2010-2011, the Intergovernmental Committee held its eighteenth and nineteenth sessions in May and July 2011. The second and the third sessions of the Intersessional Working Group met in February and March 2011: the

[1] E/2011/43, para. 28.
[2] E/2011/43, para. 31.

second session of the Intersessional Working Group focused on traditional knowledge and the third session on genetic resources. The texts produced on the three substantive themes (traditional knowledge, traditional cultural expressions and genetic resources) were accepted by the Intergovernmental Committee as bases for future work.[3]

6. The Assemblies of the member States of WIPO, at their fortieth (20th ordinary) session in September/October 2011, considered the draft texts and recommended decisions submitted by the Intergovernmental Committee and decided to renew its mandate for the biennium 2012-2013. The Intergovernmental Committee will, without prejudice to the work pursued in other forums, "expedite its work on text-based negotiations with the objective of reaching agreement on a text(s) of an international legal instrument(s) which will ensure the effective protection of genetic resources, traditional knowledge and traditional cultural expressions".[4] In 2012, the Intergovernmental Committee will follow a clearly defined programme of work that makes provision initially for four sessions, three of which will be thematic. The twentieth session of the Intergovernmental Committee will take place in February, with a thematic focus on genetic resources. The twenty-first session, which will be on traditional knowledge, is scheduled to take place in April, and the twenty-second session, on traditional cultural expressions, will be held in July.

7. The Intergovernmental Committee is requested to submit the text(s) of an international legal instrument(s) to the session of the Assemblies of the member States of WIPO in September 2012. The Assemblies will then consider the progress made and decide on the convening of a diplomatic conference. The twenty-third session, the last of the four mandated sessions of the Intergovernmental Committee, is tentatively scheduled for 2013 in order to consider the decisions of the 2012 session of the Assemblies and to take stock of further work required to finalize the text(s).

III. Participation of indigenous peoples and local communities in the work of the Intergovernmental Committee

8. The member States of WIPO have repeatedly stressed the importance attached to facilitating and enhancing the participation of observers in the work of the Intergovernmental Committee. Since its inception the Committee has undertaken a number of steps to encourage the direct participation of observers in its process, as well as their capacity-building needs, in order to bring about their meaningful engagement in that process.

Accreditation

9. At its first session, in April 2001, the Intergovernmental Committee, recognizing that many of the stakeholders with a direct interest in the work of the Committee, especially indigenous and local communities, did not enjoy permanent

[3] The most recent drafts of the working documents are available from http://www.wipo.int/tk/en/igc/index.html.

[4] The full text of the mandate of the Intergovernmental Committee for the biennium 2012-2013 is available from http://www.wipo.int/export/sites/www/tk/en/documents/pdf/decision_assemblies_2011.pdf.

observer status at WIPO, agreed to allow the participation of certain organizations as ad hoc observers,[5] and it has continued this practice at every session.

10. In accordance with the agreed "fast-track" procedure, decisions on accreditation are made by member States at the beginning of each session of the Intergovernmental Committee based on the documentation containing biographical details of organizations requesting representation in the sessions of the Committee. Currently there are 268 organizations accredited to the Committee, many of them indigenous peoples' and local communities' organizations.

WIPO Voluntary Fund for Accredited Indigenous and Local Communities

11. In 2005, the WIPO General Assembly established the WIPO Voluntary Fund for Accredited Indigenous and Local Communities in order to enhance the participation of representatives of indigenous peoples and local communities already accredited to the Intergovernmental Committee in its sessions. The rules of the Fund were amended by the WIPO General Assembly in September 2010 to include the intersessional working groups in its scope. The establishment of the Fund was noted with appreciation and donor contributions were encouraged by the Permanent Forum at its fifth session in 2006.[6]

12. Decisions on funding are made by the Director General of WIPO, based on recommendations of the Advisory Board, which selects candidates to receive funding. Nine members of the Advisory Board, nominated both by the delegations of WIPO member States and by accredited observers representing indigenous or local communities, meet during the sessions of the Intergovernmental Committee.

13. According to the rules, the extent of support that the Fund can provide depends exclusively on the voluntary contributions made by donors. In the early years of the Fund, several donors[7] made significant contributions, and it operated successfully. By mid-2011, however, the Fund had effectively run out of money. On 20 October 2011, the Government of Australia made a contribution to the Fund of 89,500 Swiss francs, an amount which should allow the Fund to continue to operate through the twentieth, twenty-first and twenty-second sessions of the Intergovernmental Committee planned for 2012. In view of the crucial need to ensure the adequate participation of indigenous and local communities in the negotiations, there are continuous efforts to encourage other member States and public or private entities to contribute to the Fund to ensure its operation beyond the twenty-second session of the Committee.

Panel of representatives of indigenous and local communities

14. In November 2004, at the seventh session of the Intergovernmental Committee, the delegation of New Zealand proposed that the Committee consider some practical changes to its procedure to enable more effective participation by indigenous and local community observers. The proposed arrangements included the

[5] WIPO/GRTKF/IC/1/2, para. 8, and WIPO/GRTKF/IC/1/13, para. 18.

[6] E/C.19/2006/11, para. 171.

[7] Since its creation in 2005, the Fund has benefited from contributions from the Christensen Fund, the Swedish International Biodiversity Programme, the Swiss Federal Institute of Intellectual Property (on two occasions), from the Governments of Australia, France, Norway and South Africa (on two occasions) and from an anonymous contributor, totalling 604,489.53 Swiss francs.

incorporation of panel presentations by members of indigenous and local communities as part of the plenary of the Committee.[8] Pursuant to that proposal, the Committee decided that future sessions of the Committee should be preceded by panel presentations by members of indigenous and local communities.[9] The panels are made up of participants from indigenous and local communities from different sociocultural regions.

15. The presentations are a rich source of information on the experiences, concerns and aspirations of indigenous and local communities concerning the protection, promotion and preservation of traditional knowledge, traditional cultural expressions and genetic resources. Although the panels do not form a formal part of the Intergovernmental Committee sessions, summary records of their proceedings are included in the reports on the sessions. Presentations by panel participants are also made available on WIPO's traditional knowledge, traditional cultural expressions and genetic resources webpage.[10]

Preparatory consultative arrangements

16. Each session of the Intergovernmental Committee is preceded by a meeting of the indigenous consultative forum, where the representatives of indigenous peoples and local communities who chair the meeting can meet and prepare for the session together. The consultative forum takes place at WIPO headquarters on the day before the opening of the session. The Intergovernmental Committee has decided that meetings of the forum are related to the Committee, so funding from the Voluntary Fund is extended for the meetings of the forum. The secretariat is on hand to provide input on substantive and organizational issues, if so invited, during the meeting. On occasion, the forum has invited delegates of member States and the Chair of the Intergovernmental Committee to participate in its meetings.

Administrative support

17. During the sessions of the Intergovernmental Committee, WIPO finances the logistical, secretarial, interpretation and translation support provided by the Indigenous Peoples' Center for Documentation, Research and Information for meetings of the representatives of indigenous and local communities. Such support, although requiring a modest financial contribution, significantly facilitates the development of the information and communications capacity of participating representatives and is highly appreciated by observers.

Information tools and resources

18. Through the WIPO traditional knowledge, genetic resources and traditional cultural expressions/folklore resources web page, all current drafts, draft proposals, working documents, comments, papers, studies, databases, questionnaires and other materials prepared for consideration by the Intergovernmental Committee, including comprehensive reports of its sessions in Arabic, Chinese, English, French, Russian

[8] The full text of the proposal by the delegation of New Zealand is contained in document WIPO/GRTKF/IC/7/14.

[9] WIPO/GRTKF/IC/7/15, para. 35.

[10] See http://www.wipo.int/tk/en/ngoparticipation/ind_loc_com/index.html.

and Spanish, are made available to the public.[11] Electronic updates and newsletters concerning relevant developments and events are regularly sent by e-mail.

19. Among recent additions, the web page now has links to background briefs on selected topics, a "snapshot", which provides a concise and factual overview of the latest developments in the Intergovernmental Committee, and frequently asked questions. A distinct web page is devoted to proposals, submissions and papers of observers.[12] The secretariat is constantly making efforts to ensure that the web page effectively responds to information and awareness needs of the member States and observers. Written guidance on the procedures of the Committee and on how to participate in its discussions are made available at the Committee's sessions and on the WIPO traditional knowledge, genetic resources and traditional cultural expressions web page.[13]

Consultancy by indigenous experts

20. Building on the initiatives that have been taken to ensure indigenous peoples' participation in the activities of WIPO relevant to traditional knowledge and traditional cultural expressions, WIPO seeks to foster the strong legal expertise that already exists within indigenous communities. To that end, WIPO has appointed several indigenous experts as consultants on specific projects.

WIPO Indigenous Intellectual Property Law Fellowship Programme

21. Since 2009, WIPO has offered indigenous legal experts the opportunity to work at WIPO and to directly participate in the delivery of core programme outputs of its Traditional Knowledge Division.[14] Following an open and competitive selection process, three successive indigenous fellows have worked at the organization for periods of six to nine months. The same opportunity will be given to a fourth indigenous fellow for a period of nine months starting in February 2012.

Briefings

22. Specific briefings and consultations for representatives of indigenous peoples and local communities, other observers and civil society at large are undertaken within the framework of the sessions of the Intergovernmental Committee. Upon invitation, or on its own initiative, the secretariat also provides briefings on the work of the Intergovernmental Committee on the margins of other United Nations meetings on related matters.

23. In May 2011, during the eighteenth session of the Intergovernmental Committee, WIPO, in cooperation with the United Nations Office of the High Commissioner for Human Rights (OHCHR), organized a panel discussion on the United Nations Declaration on the Rights of Indigenous Peoples. At the tenth

[11] See http://www.wipo.int/tk/en/.

[12] See http://www.wipo.int/tk/en/igc/ngo/ngopapers.html.

[13] See Practical Information for Delegates (http://www.wipo.int/export/sites/www/tk/en/igc/documentation/info_delegates.pdf), Facilities for Accredited Organizations Representing Indigenous and Local Communities (http://www.wipo.int/tk/en/igc/documentation/info_ngos.pdf) and Making Your Intervention (http://www.wipo.int/tk/en/igc/documentation/intervention.pdf).

[14] For further details on the programme, see http://www.wipo.int/tk/en/training/fellowship/index.html.

session of the Permanent Forum on Indigenous Issues, WIPO co-sponsored a side-event, organized by the American Indian Studies Center of the University of California in Los Angeles, on preservation and protection of the cultural heritage and intellectual property of indigenous peoples.

24. On the margins of the fourth session of the Expert Mechanism on the Rights of Indigenous Peoples of the Human Rights Council and the seventh meeting of the Ad Hoc Open-Ended Intersessional Working Group on Article 8 (j) and Related Provisions of the Convention on Biological Diversity, held in July and November 2011, respectively, WIPO organized panel discussions on indigenous peoples' traditional knowledge and intellectual property, the Intergovernmental Committee process and the status of negotiations. Representatives of indigenous peoples were invited to speak at all of the briefings.

Review of observers participation procedures

25. The fortieth (20th ordinary) session of the Assemblies of the member States of WIPO, when renewing the mandate of the Intergovernmental Committee for the biennium 2012-2013, also invited the Committee to review its procedures with a view to enhancing the positive contribution of observers to its process. In order to facilitate this review, the secretariat of WIPO was requested to prepare a study on the participation of observers in the work of the Committee. According to the decision of the General Assembly, the study should outline current practices and potential options in this regard. The study will be submitted for consideration by the Committee at its twentieth session, in February 2012. Any outcomes of the review of observer participation in the work of the Committee will be communicated to the upcoming session of the Permanent Forum on Indigenous Issues in May 2012.

IV. Capacity-building and awareness-raising initiatives on national, regional and international levels

26. For over 10 years, in addition to its intensive norm-setting activity, WIPO has, upon request, undertaken technical assistance activities on the protection of traditional knowledge, traditional cultural expressions and genetic resources against misappropriation and misuse. WIPO's capacity-building activities in this area comprise a range of complementary practical activities, including national and regional consultations, legislative assistance, awareness-raising and training. These are examples of capacity-building activities that WIPO continued to carry out in 2011.

WIPO Cultural Documentation and Intellectual Property Management Training Programme

27. Responding to the needs of indigenous and local communities to record and promote their cultural heritage without ceding authority over the use of their documented living heritage, WIPO established, within the framework of its Creative Heritage Project,[15] a training programme which focuses on providing communities

[15] The Creative Heritage Project was set up in 2006 as a capacity-building programme in the management of intellectual property rights and interests for indigenous peoples, local communities and cultural institutions. For more information on different activities of the project, see http://www.wipo.int/tk/en/culturalheritage/index.html.

with the skills and knowledge needed to record and archive their heritage, as well as to safeguard their intellectual property for future generations and their interest in managing access to their cultural documentation.

28. The training programme is offered by WIPO in partnership with two American institutions with particular expertise in the field of documentation, namely the American Folklife Center at the United States Library of Congress[16] and the Center for Documentary Studies at Duke University.[17] The aim of the training programme is to empower indigenous communities socially, culturally and economically through training them to: (a) document their own intangible cultural heritage, (b) archive the documentation for future generations and (c) safeguard their intellectual property rights and interests through the use of digital recordings. The programme contributes to promoting local economic and cultural development by supporting communities in establishing their own strategies for an equitable and balanced use of their cultural property.

29. A pilot of the training programme was conducted in 2008-2009 for the Maasai community of Laikipia, Kenya, following the community's request for WIPO's assistance with recording and archiving their cultural expressions in accordance with the community's wishes regarding the protection of its intangible cultural heritage against misappropriation. In 2011, a similar training programme was provided, in collaboration with American Folklife Center and Center for Documentary Studies, to some communities in Central America and the Caribbean, and future editions of the programme are expected to take place in other parts of the world.

Traditional knowledge action plan

30. Examples of technical assistance projects include the Traditional Knowledge Action Plan, a partnership project in which WIPO, in collaboration with the Pacific Islands Forum Secretariat, the secretariat of the Pacific Community and the secretariat of the South Pacific Regional Environmental Programme, provides assistance on intellectual property and traditional knowledge matters to six Pacific Island countries, namely Cook Islands, Fiji, Kiribati, Palau, Papua New Guinea and Vanuatu. As part of the initial phase of implementing the action plan, WIPO, in partnership with the Pacific Islands Forum Secretariat, organized briefings for experts from the countries and follow-up activities for the ongoing implementation of the national activities foreseen in the plan. An indigenous expert, Ms. Terri Janke from Australia, advises WIPO on the project.

31. A similar regional framework on traditional knowledge, traditional cultural expressions and genetic resources is being established in the Caribbean with assistance from WIPO. For that purpose, a working group has been established to undertake research, fact-finding and consultations (with indigenous and local communities, government officials, non-governmental organizations, users and other relevant stakeholders) and to develop, with the participation of representatives of indigenous communities, a harmonized framework for review by Caribbean member States. WIPO provides continuous advice and support to the two regional processes.

[16] For information on the American Folklife Center, see http://www.loc.gov/folklife/.

[17] For information on the Center for Documentary Studies, see http://cds.aas.duke.edu/.

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Permanent Forum on Indigenous Issues
Eleventh session
New York, 7-18 May 2012
Item 3 of the provisional agenda*
Discussion on the special theme for the year: "The Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress for past conquests (articles 28 and 37 of the United Nations Declaration on the Rights of Indigenous Peoples)"

Combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples

Report of the international expert group meeting

Summary

The present report provides an overview of the issues discussed at the international expert group meeting on the theme "Combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples", held from 18 to 20 January 2012 at United Nations Headquarters.

It focuses on the conclusions and recommendations of the expert group meeting which, among other things, called upon: the United Nations system, Member States and indigenous peoples' organizations to recognize the rights and special needs of indigenous women and girls; Member States to adopt measures, in conjunction with indigenous peoples, to ensure that indigenous women and girls enjoy the full protection and guarantees against all forms of violence and discrimination; the United Nations system to support efforts and initiatives that provide support and protection to indigenous women and girls; and indigenous communities to consider seriously the problem of violence against indigenous women and girls in their communities through ways that include the recognition and dismantling of existing patriarchal social relations, the elimination of discriminatory policies and a continuous commitment to indigenous women's rights in all indigenous institutions and at all levels.

* E/C.19/2012/1.

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I. Introduction

1. At its tenth session, the Permanent Forum on Indigenous Issues recommended that the Economic and Social Council authorize a three-day international expert group meeting on the theme "Combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples". At its regular session on 28 July 2011, the Council decided to authorize the international expert group meeting (Council decision 2011/266), including the participation of members of the Permanent Forum, representatives of the United Nations system, other interested intergovernmental organizations, experts from indigenous peoples' organizations and interested Member States. It also requested that the results of the meeting be reported to the Permanent Forum at its eleventh session. The workshop was organized by the secretariat of the Permanent Forum. The agenda and programme of work are attached (see annex I).

II. Organization of work

A. Attendance

2. The following members of the Permanent Forum on Indigenous Issues attended the workshop:

Myrna Cunningham Kain
Megan Davis
Helen Kaljulate
Bertie Xavier

3. The following experts from the United Nations mechanisms on the rights of indigenous peoples attended the workshop:

Professor James Anaya, Special Rapporteur on the rights of indigenous peoples

Vital Bambanze, Chair, Expert Mechanism on the Rights of Indigenous Peoples

4. The following experts participated in the workshop:

Rauna Kuokkanen (Arctic)
Edwina Kotoisuva (Pacific)
Guadalupe Martinez Perez (Central and South America and the Caribbean)
Valeriya Savran (Central and Eastern Europe, Russian Federation, Central Asia and Transcaucasia)
Sangeeta Lama (Asia)
Terri Henry (North America)

5. The workshop was attended by observers from Member States; United Nations agencies, funds and programmes; other intergovernmental organizations; indigenous peoples' organizations; and non-governmental organizations. The list of participants is attached (see annex II).

B. Documentation

6. The participants had before them a draft programme of work and documents prepared by the participating experts. The documents for the expert group meeting are attached (see annex III). The documentation is also available on the website of the secretariat of the Permanent Forum (http://social.un.org/index/IndigenousPeoples/MeetingsandWorkshops/2012.aspx).

C. Opening of the meeting

7. At the opening of the expert group meeting, the Director for the Division for Social Policy and Development of the Department of Economic and Social Affairs made a statement welcoming everyone to the meeting. The head of the secretariat of the Permanent Forum on Indigenous Issues then welcomed the regional experts and representatives of the United Nations mechanisms on the rights of indigenous peoples and outlined the objectives of the meeting.

D. Election of officers

8. Myrna Cunningham Kain, the Chair of the Permanent Forum, was elected Chair of the workshop and Megan Davis, member of the Permanent Forum, was elected Rapporteur.

E. Conclusions and recommendations

9. On 20 January 2012, the experts adopted by consensus the conclusions and recommendations contained in section IV below.

III. Highlights of the discussion

10. Participants noted the importance of article 22 (2) of the United Nations Declaration on the Rights of Indigenous Peoples. The article affirms the rights and special needs of indigenous women and children. Under the article, States are required to adopt measures, in conjunction with indigenous peoples, to ensure that women and children enjoy the full protection and guarantees against all forms of violence and discrimination. Such measures include specific laws that are integral to combating violence and discrimination against indigenous women and girls.

11. Article 22 (2) derives its authority from general prohibitions in international law against all forms of violence and discrimination contained in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Article 22 (2) is also supported in the body of international law pertaining to women-specific and child-specific rights and protections against all forms of violence and discrimination, including the Declaration on the Elimination of Violence against Women, the Convention on the Elimination of All Forms of Discrimination against Women and extensive treaty body comments, including general recommendation No. 19 on violence against women of the Committee on

the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and general comment No. 11 on indigenous children and their rights under the Convention on the Rights of the Child of the Committee on the Rights of the Child.

12. Participants also noted that indigenous girls were an equally important consideration of article 22 (2) and were too readily overlooked in international discussions on violence against women even though, fundamentally, violence against indigenous girls was related to the same norms and practices that caused violence and discrimination against women.

13. Participants heard stories involving violence against indigenous girls and youth in community settings, including child labour, bonded labour, trafficking of young girls for prostitution and domestic work, rape, incest and sexual abuse, violence in situations of armed conflict and militarization, female genital mutilation and forced and early marriages. It was noted that indigenous girls faced rights violations on multiple levels as children in an adult world and as girls in a patriarchal world. The United Nations Inter-Agency Task Force on Adolescent Girls has identified indigenous girls as one of the groups at particularly high risk of experiencing human rights abuses.

IV. Conclusions and recommendations

A. Conclusions

Addressing violence against indigenous women and girls as a human rights issue

14. While there is a voluminous body of literature on indigenous peoples' rights and violence against women in general, there is a lack of literature on violence against indigenous women and girls. There is also a paucity of statistics on the extent of violence against indigenous women and girls, statistics which are critical to the development and implementation of evidence-based policy, law reform and judicial training. There is almost no disaggregated data and few reports on violence against indigenous women and girls in most jurisdictions, including in Africa, Asia, the South Pacific, Latin America and certain parts of the Arctic.

15. There is a need for an indigenous human rights discourse within which concrete circumstances, multiple identities and multiple agendas are recognized and a nuanced articulation of indigenous women's rights can be developed. Moreover, addressing the issue of violence against indigenous women and girls must take place alongside the discussions on the implementation of indigenous peoples' right to self-determination. The process of combating gendered violence must start within indigenous communities and include eliminating interpersonal physical, sexual and psychological violence, and it must replace government policies that have displaced indigenous women from their communities.

16. Workshop participants heard about the limitations of the body of public international law pertaining to the elimination of all forms of violence and discrimination against indigenous women and indigenous children, including the lack of domestic enforcement measures for international instruments, the lack of accessibility to treaty committees and the lack of familiarity with the formal, legalistic requirements of the international human rights framework. Those

challenges are compounded when indigenous women and girls lack education or have low literacy rates. Those obstacles must first be overcome in order for indigenous women and girls to benefit from international human rights law.[1]

17. Combating violence against women and girls in the indigenous context must be achieved holistically and not addressed in isolation from the range of rights recognized for indigenous peoples in general. In that regard, violence cannot be seen as separate from the history of discrimination and marginalization experienced by indigenous peoples as a whole. That history manifests itself in continued troubling structural factors, such as poverty, lack of access to lands and resources and limited access to education and health services. Similarly, violence against indigenous women cannot be separated from the other effects of colonization, which include the breakdown of community structures and cultural authority and the persistence of intergenerational traumas that have led to alcohol- and drug-fuelled violence against indigenous women and girls.

18. Policies based on racism, exclusion and a development approach contrary to the principles of indigenous peoples and fundamental human rights are, in many parts of the world, still in place. These policies continue to be implemented by the State as well as through the multinational corporations that operate on indigenous peoples' territories and extract resources from indigenous lands. Those policies have a detrimental impact on indigenous women and girls.

19. In combating violence, it is important to distinguish gendered forms of violence from general manifestations of violence because if there is no focus on the interpersonal nature of gender violence — between a man and a woman — there will be a failure to address the endemic levels of violence against indigenous women and girls in indigenous communities.

Contextualizing violence

20. Violence against indigenous women and girls, adolescents and youth is political, social, economic, spiritual, physical, sexual, psychological and environmental. It has multiple dimensions: interpersonal and structural, public and private, non-State and State. There are numerous historical and contemporary examples, including sex trafficking, prostitution, bonded labour, the exploitation of overseas contract workers, the internal displacement of women, the disappearance or murder of aboriginal women, witch-hunting or witch-blaming and environmental violence, and cultural practices such as female genital mutilation or cutting, bride price and promised brides as well as racism and discrimination.

21. State violence or structural violence perpetrated by State and non-State actors and corporate actors in the public domain includes militarization and the activities of multinational corporations and extractive industries that operate with impunity on indigenous peoples' territories. Those actors and their activities have a detrimental impact on indigenous women and girls, which manifests itself in sexual assault, sex trafficking, prostitution, bonded labour, the exploitation of overseas contract workers, the internal displacement of women and environmental violence.

22. Interpersonal violence, or violence in the private domain, often involves violence perpetrated by men against women, including spousal violence, sexual

[1] See Rauna Kuokkanen, "Self-determination and indigenous women's rights at the intersection of international human rights", *Human Rights Quarterly*, vol. 34, No. 1 (February 2012).

assault or incest. It is important to recognize that a discussion about gendered interpersonal violence is not only about domestic violence but also about the racialized sexual violence that indigenous women experience, which often goes unreported or underreported as a result of the normalization and condoning of violence against indigenous women in both indigenous communities and society at large. Such violence, and the fact that it is widely ignored, contribute to the dehumanization of indigenous women.

23. Some caution was expressed about the overemphasis on colonization in conversations about addressing violence against indigenous women and girls. There is a stigma about talking about interpersonal violence within indigenous communities. One reason for this is the imposed patriarchal societal practices that render interpersonal physical and sexual violence as belonging to the private domain and thus something that is not discussed in public. It is important to recognize the ways in which the private/public division of the colonizer has been adopted by indigenous communities and how that affected the human rights of indigenous women and girls.

24. While the trauma of colonization explains the reason for such destructive behaviours, it does not mean that indigenous men should not take responsibility for their behaviour.[2] In the end, colonization does not excuse the violence. There is a need to be vigilant against the often-repeated narratives of colonization and its associated trauma that can cause women and girls not to report violence for fear of being ostracized by the community. Such fears compound the already marginalized and vulnerable situation of indigenous women and girls arising from prevailing racist and sexist attitudes among State and public authorities and non-State actors, and explains why there is a chronic underreporting of violence in indigenous communities.

Manifestations of violence

25. Militarization is often accompanied by sexual harassment, forced prostitution and servitude, and sexual violence against indigenous women and girls is used as a counter-insurgency tactic and as a tool to neutralize indigenous opposition, break resistance and weaken indigenous peoples. Sexual violence is being used as a tool or method to quash resistance or force indigenous cooperation. Indigenous women are forced to migrate as a result of armed conflict and the militarization of territories and, in this context, indigenous women suffer from sexual violence, forced impregnation and abandonment, the impact of drug traffic networks, arms trafficking, internal displacement, organized crime and the wide spread of HIV/AIDS.

26. Environmental violence and the lack of accountability of corporations and States on indigenous lands have resulted in devastating health and reproductive impacts, including toxins that are released into the environment and which cause severe and ongoing harm to indigenous women, girls and unborn generations.[3] These toxins included pesticides, mercury, uranium and industrial and military

[2] See Megan Davis, "Aboriginal women and the right to self-determination: a capabilities approach to constitutional reform", PhD dissertation, Australian National University, 2010.

[3] See International Indian Treaty Council, "Indigenous women and environmental violence: a rights-based approach addressing impacts of environmental contamination on indigenous women, girls and future generations", paper submitted at the international expert group meeting on the theme "Combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples", New York, January 2012.

waste and other persistent organic pollutants. Their production, use, dumping and general proliferation adversely affects the right of indigenous women and girls to free, prior and informed consent, health, well-being, culture, development, food and subsistence, life and security of person.

27. The ecological, economic and spiritual impact of extractive industries affects the rights of indigenous women. In their role as traditional caretakers of the environment, indigenous women are being threatened by policies that deregulate corporate behaviour, destroy subsistence agriculture and other traditional ways of life, deplete non-renewable resources and threaten biodiversity. An example of that was the disproportionate use of indigenous lands as sites for industrial waste, resulting in serious health disorders. It was noted that industries such as extractive industries, monocultural plantations and the nuclear industry have not adopted a gendered approach to their activities, including in their relationships and organizations with indigenous communities. Women need to be considered in the context of the normative framework of free, prior and informed consent.

28. Participants were made aware of sex trafficking in many countries. Indigenous women and girls are being trafficked to metropolitan areas as domestic workers and prostitutes where they face sexual violence in different forms. This raises a host of human rights problems for indigenous women and girls, including the lack of identity or citizenship cards, which means that indigenous women and girls have no access to basic health services, including reproductive health services. The lack of a birth certificate also increases the risk of trafficking, discrimination and violence for indigenous girls and youth. That is further exacerbated by a lack of access to education, health services and the legal system.

29. Customary or traditional law are often used as coercive means of controlling women. Some of the examples shared by experts and participants include the use of dress codes to control what women wear and public punishment of girls who straighten or colour their hair as a coercive way of forcing women to submit to oppressive cultural practices. Technology has also affected some of the customary or traditional methods of controlling women, such as the use of mobile phones to rapidly spread rumours and allegations about sorcery and identify particular women as witches. In understanding violence, the power relationships between men and women in indigenous communities, patriarchy, machismo, male privilege and the loss of the cultural values of reciprocity and duality between man and woman must be considered. It was noted, however, that when examined, some customary or traditional ways and introduced practices emerge as distorted or skewed practices, and that they are misused to justify and militate violence against indigenous women and girls. Participants heard stories about custom being used as a means of excusing the perpetrator.

30. Violence against women is often a consequence of women's exclusion from participation in decision-making. That is significant in the context of free, prior and informed consent by indigenous peoples. If women are excluded from negotiations, whether in relation to the construction of a hydroelectric dam or other resource extraction or in relation to peace or land rights with the State, then the self-determination of indigenous peoples can never be truly achieved. It is necessary for women's participation to be factored into the normative and operational framework.

Issues of jurisdiction and policing

31. Reporting of violence was a significant issue raised in the context of jurisdiction and policing. In many communities, discussion of sexual violence against indigenous women and girls by indigenous men is taboo. The impact of indigenous women and girls reporting violence upon families and communities must be explored because often women are accused of being "disloyal" or "corrupted by Western concepts". In communities where extended family relationships are important and there is a heavy emphasis on maintaining good relations or the concept of keeping the honour of family or clan, extended families can protect perpetrators rather than women who have been victims of violence, rendering the violence invisible and unaddressed. Participants heard cases of indigenous perpetrators who were told to marry the indigenous women they had sexually assaulted as a form of compensation and/or punishment. In addition, indigenous women and girls often face additional barriers in their attempts to report violence to authorities or press charges against perpetrators because, for example, it could mean losing a breadwinner or a main source of subsistence if the man is the one in charge of providing it through traditional livelihoods such as hunting or fishing.

32. The lack of statistics in regard to issues of jurisdiction and policing is an obstacle to developing ways in which communities can work with authorities to deliver appropriate responses to victims of violence. The reported estimates of violence against indigenous women and girls in indigenous communities are widely understood to be underestimated. That is why the process of changing societal attitudes that condone violence and aggression and perpetuate gender injustice is important in indigenous communities. One consequence of the failure to challenge norms of violence in indigenous communities is that indigenous women and girls internalize and reproduce the violence, racism and sexism, and it becomes normalized.

33. Participants drew attention to legal barriers to combating violence against indigenous women and girls and heard examples in which tribal jurisdiction and the authority of tribal courts over certain criminal acts, including violent and sexual crimes against women, was being removed. Conflicting and overlapping levels of criminal jurisdiction undermine indigenous peoples' sovereignty and can act as a barrier to accessing justice. One example of how overlapping jurisdiction might affect accuracy is in the recording of indigeneity and the recording of violence, which often prevented the linkage of data through service systems and therefore create a limited capacity to analyse data.

34. There is a fragmentation of information and communication between public institutions such as the courts and the police and a lack of coordination between communities and policing agencies that undermine long-term investigations. That is especially the case when urban migration and frequent mobility between urban centres and indigenous communities result in the involvement of multiple jurisdictions. A partnership approach between indigenous peoples and policing systems is required in order to adequately combat violence against indigenous women and girls, for example through police investigations into long-term missing persons cases and unsolved murders of indigenous women and girls.

35. Participants heard concerns about some traditional justice systems and the need for these traditional mechanisms to address indigenous women's access to resources, including access to and ownership of land. In addition, there is a need to

strengthen the willingness and ability of traditional justice systems to protect indigenous women and girls from violence, which must include customary courts becoming familiar with the concept of equality found in the Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Declaration on the Rights of Indigenous Peoples and the Convention on the Rights of the Child. There is also a need to ensure that women are allowed to access the formal court system if they choose to pursue that option. In the event that traditional reconciliation has been undertaken, that should not be used as a mitigating factor in formal court decisions where, in some cases, traditional reconciliation practices have been used as a means of excusing the perpetrator.

36. There is often a lack of understanding by both customary courts and mainstream courts about the dimensions of violence against indigenous women and girls. In both customary and mainstream courts there should be better protection of the rights of women's rights defenders. Participants heard many stories about the ways in which women are blamed for the violence perpetrated against them and witness the impunity of perpetrators on the basis of the "breadwinner" argument — that perpetrators should avoid punishment because they are the primary income earner or subsistence provider in a family or community — an argument that is embedded in both formal and informal justice mechanisms. In those circumstances there are limited options for women who wanted to access justice. Those concerns do not undermine a commitment to legal pluralism because the rule of law does not exist equally when the rights of indigenous women and girls are undermined.

37. Participants expressed grave concerns about cases of missing women and the struggle of families and friends to report missing indigenous women when no evidence of their disappearance exists, other than the fact that they have not returned home. Participants heard about the impact of poverty on indigenous communities and how those women, having no opportunities in their communities, move to the city to work but end up working in prostitution, rendering them at high risk of experiencing violence.[4]

Anti-violence strategies

38. Participants heard that violence leads to the view that indigenous women are victims, but it is also important to view indigenous women and girls as active subjects and bearers of rights who conceive of and develop appropriate responses in order to combat violence. This is central to the realization of the right to self-determination of indigenous women and girls.

39. Measures to combat violence against indigenous women and girls should be holistic, involving indigenous men and women, victims and perpetrators. In her report to the General Assembly in October 2011, the Special Rapporteur on violence against women, Rashida Manjoo, emphasized a holistic approach to combating violence against women that involved (a) considering human rights to be universal, interdependent and indivisible; (b) understanding violence against women to be within a continuum that spanned interpersonal and structural violence; (c) acknowledging the structural aspects and factors of discrimination, including

[4] See Native Women's Association of Canada, "Small steps on a long journey", paper submitted at the international expert group meeting on the theme "Combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples", New York, January 2012.

structural and institutional inequalities; and (d) examining social or economic hierarchies between women and men and also among women (see A/66/215). An effective way of addressing violence is to encourage and train men and male leadership so that there is male advocacy for women's and children's human rights.

40. Culture is always evolving, and it was important to be vigilant against cultural practices and beliefs that oppress women and contribute to violence. It is important to support and encourage systems and customs that support the rights of indigenous women and girls. It is also important to consider how States and indigenous communities can work together to devise ways to balance the laws and policies to support culturally appropriate indigenous anti-violent work.

41. State courts, judicial and law enforcement officials should have gender training as well as training regarding the specific concerns and circumstances of indigenous women, as provided by indigenous women. In addition, customary courts and tribal courts should be encouraged and supported to advocate effectively on behalf of indigenous women and girls, in particular, with regard to protection from all forms of violence. Moreover, indigenous women should be involved in the operations of the customary and tribal courts.

42. In cases where traditional indigenous legal and governance systems recognize the rights of indigenous women based on their own traditional laws and cultures, their ability to enforce and implement these laws, and, in particular to protect indigenous women and girls from all forms of violence, should be respected and not undermined by colonial or State judicial, court or law enforcement systems, in accordance with articles 3, 4 and 5 of the United Nations Declaration on the Rights of Indigenous Peoples.

43. Participants noted that anti-violence strategies must be underpinned by a harmonization between domestic laws and international laws that recognize and protect indigenous women and girls.

44. Participants concluded that there are a number of examples of best practices, emerging practices and lessons learned in indigenous communities for dealing with violence. Those approaches include awareness-raising and networking projects aimed at educating indigenous women on their rights as well as building the capacity of women to advocate their rights towards institutions such as customary institutions. Successful measures have also included capacity-building programmes targeted at advocacy for indigenous men and community leadership that enlists indigenous men in the tackling of that issue. Programmes aimed at equipping indigenous women with skills such as facilitation, lobbying, networking, leadership and advocacy skills are needed in order to write reports on issues such as domestic violence and kidnapping. Such skills have engendered a sense of empowerment among indigenous women. There are many community-based examples of anti-violence strategies that have been successful in breaking the cycle of silence with regard to the problem of violence against indigenous women and girls.

B. Recommendations

45. The following recommendations to indigenous peoples were developed by the experts in the context of the expert group meeting and the discussions on ways indigenous communities can better deal with violence against indigenous women

and girls. These recommendations are made in the context and spirit of article 3 of the United Nations Declaration on the Rights of Indigenous Peoples and the right of indigenous peoples to self-determination, and acknowledge that it is communities themselves that are best equipped to devise solutions to the concrete and contextual problems in their own communities.

Indigenous peoples

46. The experts call upon indigenous communities, including indigenous leaders and indigenous institutions, to seriously consider the problem of violence against women and girls in their communities. This should become an inseparable part of the communities' discourse on indigenous human rights advocacy because implementing indigenous self-determination requires the recognition and dismantling of existing patriarchal social relations, eliminating discriminatory policies and the continuous commitment to indigenous women's rights in all indigenous institutions and at all levels.

47. The experts recommend that indigenous communities, indigenous organizations and institutions implement the United Nations Declaration on the Rights of Indigenous Peoples, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) as a framework for advancing their rights, developing and strengthening policy and decision-making frameworks or developing their own constitutions, which are needed to uphold and guarantee indigenous women's rights, as well as eliminate discriminatory policies or structures aimed at indigenous women at the community, local or national and international levels.

48. Indigenous communities, indigenous peoples, indigenous organizations, indigenous nations and indigenous institutions need to promote healthy discussion and debate between men and women, boys and girls, and youth and elders on violence against indigenous women and girls by promoting forums for dialogue between indigenous men and women in order to identify any traditional and cultural practices and activities that may violate the rights of indigenous women and girls and agree on ways to eliminate these practices. These forums should also be used to reinforce and strengthen the protection of indigenous women and girls.

49. Indigenous communities and indigenous institutions should promote knowledge and information for indigenous men and women on the rights of women and girls and the need to protect, preserve and promote these rights through civic education. Community awareness should also be encouraged through workshops, seminars and international forums. Indigenous men and indigenous male leaders should be trained to take a leadership role in these issues jointly with women.

50. Indigenous communities, indigenous peoples, indigenous organizations, indigenous nations and indigenous institutions should ensure the full participation of indigenous women at all levels of decision-making in conflict prevention, management and resolution, as well as in post-conflict and post-natural disaster reconstruction and peacebuilding processes, including, for example, the setting of gender quotas for all peace processes.

51. Indigenous communities should consider creating and supporting initiatives to monitor and assess the situation of violence against indigenous women and girls and present regular reports to the Permanent Forum on violence against indigenous women and girls. These documents and studies should be made by indigenous women themselves.

52. Indigenous women should submit information about specific cases of alleged human rights violations against indigenous women and girls, their causes and consequences to the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on violence against women. Indigenous women should be encouraged to submit complaints to treaty bodies, including the Committee on the Rights of the Child, and issue shadow reports and submit them to the universal periodic review of the Human Rights Council.

States

53. The experts call upon States to strengthen the legal frameworks on the rights of women under the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the United Nations Declaration on the Rights of Indigenous Peoples and the Convention of Belém do Pará, particularly as they relate to indigenous women, as well as to strengthen related policies that address violence against indigenous women and girls. States should also support information and education campaigns on violence against indigenous women and human rights as well as build the capacity of relevant Government agencies and institutions, including judicial bodies, law enforcement agencies and women- and service-related institutions, and establish specialized bodies at the national and/or subnational levels to specifically address the conditions of indigenous women with the full and effective participation of indigenous women. States should allocate adequate, long-term funding to support these initiatives.

54. The experts call upon States to work with indigenous peoples to train the judiciary and judicial administrators, civil servants and health-care professionals on the prevention of violence and discrimination against indigenous women, including international standards on indigenous peoples' rights at all levels and sensitivity towards indigenous women's issues.

55. It is recommended that United Nations agencies, bodies and other entities support the development of protocol templates for police practices involving missing persons cases of indigenous women and girls. It is also recommended that indigenous peoples and States work in partnership to implement these protocol templates to increase their effectiveness and to be consistent with international human rights laws, norms and standards.

56. States should fund indigenous and non-indigenous media as an important conduit for public opinion and influencer of societal attitudes. This funding should train indigenous and other journalists to report on violence against women in a gender- and indigenous-sensitive manner to help dispel myths and taboos and create awareness of the issue of violence against women in indigenous communities.

57. States should implement and strengthen national censuses and data collection on socio-economic and well-being indicators to include data disaggregation in relation to violence against indigenous women and girls.

58. States and United Nations agencies should strengthen disaggregated data collection on indigenous migration, including indigenous children and youth, to rural areas, border regions and urban centres with regard to human rights violations against indigenous women and girls.

59. States and United Nations agencies should ensure disaggregation of data and studies on the impact of environmental toxins and persistent organic pollutants on the health of indigenous women and girls and youth.

60. States must implement human rights standards and obligations regarding indigenous women and girls when considering strategies for gender mainstreaming and gender perspectives in order to ensure the inclusion of human rights for indigenous women and girls.

61. States must ensure that indigenous women's organizations have the support, recognition and resources to strengthen and develop their economic, social and political empowerment and peacebuilding efforts, especially among vulnerable groups such as indigenous female-headed households, widows, orphans, persons with disabilities and survivors of gender-based violence, including sexual violence, and natural disasters. States must take measures that support local women's peace initiatives and indigenous processes for conflict resolution, and involve women in all implementation mechanisms of peace agreements.

62. States and indigenous communities should jointly find ways to balance the laws and policies in dealing with violence against indigenous women and girls and ensure that there are resources for community-based initiatives, including customary or tribal courts, in indigenous communities so that they can deal with these issues. This includes States working in full collaboration with indigenous communities to improve the ways in which States respond to complaints about violence against indigenous women and girls, including how they respond to cases of missing women and girls.

63. States, in conjunction with indigenous peoples, should facilitate the creation of a forum for dialogue, collaboration and cooperation in which there are overlapping jurisdictions for addressing violence against indigenous women and girls on and off indigenous territories, explore how complicated jurisdictional schemes may unjustly discriminate against indigenous women and progressively document how issues should be resolved in accordance with article 27 of the United Nations Declaration on the Rights of Indigenous Peoples.

64. States should facilitate and provide support for the development of indigenous women's community-based anti-violence strategies, rather than imposing strategies that do not reflect the values and knowledge of particular indigenous communities. This should involve support for the education of young people, the re-examination of traditions and challenging values and notions of masculinity based on aggression and control and the development of skills to resolve conflict in a non-violent manner.

65. States should invite the Special Rapporteur on the rights of indigenous peoples and other relevant special rapporteurs to investigate the effects of the alarming and increasing involvement of indigenous children and youth in criminal gangs, drug trafficking, suicide and sexual exploitation, including the disproportionate representation of indigenous youth in prisons.

66. States must develop and support, in consultation and with free, prior and informed consent with indigenous communities, training programmes to inform indigenous women of opportunities for their political participation locally, nationally and internationally, and to build the political capacity of indigenous women so that they can participate fully and effectively in decision-making at all levels.

67. States should ensure that the impact of militarization upon indigenous women and girls be included in reports and national statistics. States should ensure legal training and counselling and financial and psychological support for indigenous women and girls at risk in militarized countries, lands and communities.

68. States should implement Security Council resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009) and 1960 (2010). It is recommended that States take appropriate measures to enact a zero-tolerance policy on violence against indigenous women and girls in times of conflict, and measures to end impunity, especially with regard to grave incidents of rape against indigenous women and girls committed by members of military, paramilitary and settler groups. This includes legislation, awareness-raising and training of military personnel, police and the judiciary. Moreover, Governments, military and non-State armed groups and all others concerned should be educated to understand that rape used as a weapon of war constitutes a crime against humanity, punishable under the Rome Statute of the International Criminal Court.

69. States should take appropriate measures to protect internally displaced women on the occasions of natural disasters.

70. States should ensure that adequate health-care screening is provided to indigenous communities living on lands used for development and military purposes. This will ensure early detection of illnesses that could affect indigenous communities as a result of activities relating to development and military use. Funding should be provided for the cleanup of ecological contamination at military bases and the clearing of land mines in conjunction with indigenous peoples. Health care must be provided to indigenous women and girls affected by these activities.

71. States should ensure that victims of military violence are protected so that they can overcome their fear of prosecuting and bring their perpetrators to justice.

72. States should establish and make available age-appropriate facilities to support indigenous women and girls affected by violence, including the provision of legal aid, psychological and social protection and witness protection when needed.

73. States should develop a robust monitoring and evaluation framework to measure the impact of policies and programmes targeted at the eradication of violence against indigenous women and girls.

United Nations

74. The experts encourage greater coordination among United Nations agencies, including with States and indigenous peoples, on the issue of violence against indigenous women and girls and the implementation of inter-agency programmes on these issues at regional, national and international levels.

75. The experts recommend that the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) work specifically on the situation

and rights of indigenous women and girls, particularly in regard to its efforts to promote women's economic empowerment and combat violence against indigenous women and girls in accordance with the recommendation of the Permanent Forum on Indigenous Issues at its tenth session (see E/2011/43, para. 107).

76. The experts recommend that the relevant United Nations agencies consider training the members of peacekeeping and peacebuilding operations, including the operations of human rights staff, on the prevention of violence and discrimination against indigenous women and girls and on the international standards on indigenous peoples' rights.

77. The experts recommend that the Permanent Forum on Indigenous Issues and relevant United Nations agencies compile a database of best practices on measures to combat violence and all forms of discrimination against indigenous women and girls, including successful and emerging indigenous community-based initiatives.

78. States and United Nations agencies, funds and programmes should develop specific strategies and policies that promote and protect the rights of indigenous women and girls in the area of violence with the full and effective participation of indigenous women and girls. This should include, but is not limited to:

(a) Research and studies on the situation of indigenous women's and girls' experiences, good practices and lessons learned, including examples of best practices that are community driven or have employed traditional models and strategies and have been independently evaluated as being effective in reducing violence;[5]

(b) Empower indigenous women through appropriate capacity-building and education and advocacy activities;

(c) Facilitate and support the establishment of and work with indigenous women's groups and networks at the national level as well as the provision of legal and other appropriate services to indigenous women who are victims of violence, and support the travel and related budgets for indigenous women's effective participation in regional and international processes, relevant conferences and workshops;

(d) Data collection supported by agencies;

(e) Financial support for programmes on combating violence against indigenous women and girls;

(f) The establishment of a trust fund by UN-Women specifically for programmes targeted at indigenous women and especially female victims of violence.

79. Owing to the lack of data and statistics on violence against indigenous women and girls in many regions, such as Africa, Asia, Latin America, the South Pacific and the Arctic, it is recommended that the Expert Mechanism on the Rights of Indigenous Peoples conduct a thematic study, in collaboration with indigenous women's organizations and indigenous peoples' institutions, on human rights violations against indigenous women and girls.

[5] See *Indigenous Women and the United Nations System: Good Practices and Lessons Learned* (United Nations publication, Sales No. E.06.I.9).

80. Relevant United Nations agencies should help to implement, together with States, the right to adequate and affordable housing for indigenous women and girls where there is an urgent need for appropriate and safe housing so that indigenous women and girls can live in dignity, strengthen indigenous family systems, improve economic possibilities and support cultural development. This includes the support for and provision of shelters for indigenous women and girls escaping violence.

81. The experts urge all relevant United Nations agencies to monitor violence against indigenous women and children with regard to migration and immigration policies and transborder movements and to raise awareness about indigenous peoples' migration, highlighting in particular the situation of indigenous children and youth.

82. The experts recommend that the study of the Special Rapporteur on the rights of indigenous peoples regarding extractive industries operating within or near indigenous territories and the study of the Expert Mechanism on the Rights of Indigenous Peoples regarding the right to participate in decision-making of indigenous peoples in relation to extractive industries incorporate the special perspective of indigenous women and the normative and operational framework of free, prior and informed consent.

83. The experts recommend that the ongoing study being supported by the International Labour Organization, the United Nations Children's Fund, the United Nations Population Fund, UN-Women and the World Health Organization on violence against indigenous girls and youth be completed and presented to the Permanent Forum on Indigenous Issues at its eleventh session in May 2012 and that the above-mentioned agencies develop a concrete plan for the full implementation of its recommendations.

84. The experts recommend to the United Nations agencies that they support the initiatives of indigenous women's organizations and networks with the purpose of monitoring the recommendations of the Convention on the Elimination of All Forms of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Permanent Forum and others at the national level. In the same way, they support the processes of companion reports developed by indigenous women's organizations.

85. The experts recommend that the campaign of the Secretary-General to end violence against women should include a line of work focused specifically on violence against indigenous women designed in consultation with the participation of indigenous women's organizations.

86. The experts recommend that the report of the Secretary-General on the implementation of the Convention on the Rights of the Child focus specific attention on indigenous children, including indigenous girls. The experts encourage indigenous peoples to contribute information to this report to ensure that resolutions coming from the General Assembly will be relevant for indigenous children and to consider submitting an indigenous companion report on indigenous children, including indigenous girls, to be reflected in the report of the Secretary-General. Such a companion report on indigenous children should feed into the work of the world conference on indigenous peoples.

87. The experts call upon the Office of the United Nations High Commissioner for Refugees, the Office for the Coordination of Humanitarian Affairs, the United

Nations Office on Drugs and Crime and the Commission on Narcotic Drugs to undertake studies jointly with indigenous peoples to examine how their policies and programmes are affecting indigenous women and girls and to make recommendations on how to address them.

88. In light of the fact that the few indigenous women from Africa who have been able to participate effectively in international and regional forums have created visibility for African indigenous women, United Nations agencies should support their greater participation, as there is still need for their full and effective participation at forums that address violence against women such as the Commission on the Status of Women and also the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women in order to ensure that all mechanisms and treaty bodies allow the participation of indigenous peoples, especially indigenous women and girls.

Annex I

Agenda and programme of work

Date/time	*Item/Programme*	
Wednesday, 18 January 2012		
10-10.30 a.m.		Opening of the workshop by the Chair, secretariat of the Permanent Forum on Indigenous Issues
	Item 1	Election of Chair and Rapporteur
	Item 2	Adoption of agenda and organization of work
10.30 a.m.-1 p.m.		**Theme 1: Addressing violence against indigenous women and girls as a human rights issue** Analysis of human rights international standards that could be applied to advancing the rights of indigenous women and girls (including the United Nations Declaration on the Rights of Indigenous Peoples, International Labour Organization Convention No. 169 concerning indigenous and tribal peoples in independent countries, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), case law and comments of the International Convention on the Elimination of All Forms of Racial Discrimination and the Beijing Platform for Action. Analysis of how the needs and goals of indigenous women and girls may differ from the needs and goals of non-indigenous women and girls. *Opening statement and presentations* Professor James Anaya Members of the Permanent Forum Rauna Kuokkanen Terri Henry
3-6 p.m.		**Theme 2: Contextualizing violence** Highlight existing institutional structures that contribute to economic violence against indigenous women and girls. Outline how violence against indigenous women and girls is enacted through State policies and practices.

Date/time	*Item/Programme*
	Outline how corporate practices on indigenous lands and territories inflict violence against indigenous women and girls. Outline examples of good practices that could help safeguard the rights of indigenous women and girls to economic survival. *Presentations* Victoria Tauli-Corpuz Andrea Carmen and Viola Waghiyi
Thursday, 19 January 2012	
10 a.m.-1 p.m.	**Theme 3: Manifestations of violence** Violence against indigenous women and girls in the name of traditional and cultural practices. Violence against indigenous women and girls through armed conflict and militarization. Violence against indigenous women and girls through migration and displacement. Placing indigenous women and girls at risk through State violence and domestic violence. *Presentations* Guadalupe Martinez Perez Sangeeta Lama Teresa Zapeta
3-6 p.m.	**Theme 4: Issues of jurisdiction and policing** Provide an overview of the problems associated with different jurisdictional authorities of policing. Highlight the persistent barriers to reporting violence such as delays and failure to respond to complaints and inadequate and inappropriate policing. Highlight the persistent barriers to prosecution of perpetrators at the local, state and federal levels and discrimination in state and federal prosecutions. Outline examples of restorative justice. *Presentations* Edwina Kotoisuva Otilia Lux de Coti Vital Bambaze

Date/time	*Item/Programme*	
Friday, 20 January 2012		
10 a.m.-1 p.m.		**Theme 5: Anti-violence strategies** Highlight examples of indigenous women's community-based anti-violence strategies. Highlight ways to develop indicators and improve data-collection methods in order to measure violence against indigenous women and girls. Highlight measures to incorporate human rights into anti-violence programmes and projects. Highlight measures to strengthen indigenous women's and girls' advocacy and leadership skills. *Presentations* Valeriya Savran Maria Teresa Duque Jeanette Corbiere Lavell and Irene Goodwin
3-6 p.m.	Item 8	Adoption of the conclusions and recommendations

Annex II

List of participants

Members of the Permanent Forum on Indigenous Issues

Myrna Cunningham Kain

Megan Davis

Helen Kaljulate

Bertie Xavier

Invited experts

Professor James Anaya (Special Rapporteur on the rights of indigenous peoples)

Vital Bambanze (Chair, Expert Mechanism on the Rights of Indigenous Peoples)

Rauna Kuokkanen (Arctic)

Edwina Kotoisuva (Pacific)

Guadalupe Martinez Perez (Central and South America and the Caribbean)

Valeriya Savran (Central and Eastern Europe, Russian Federation, Central Asia and Transcaucasia)

Sangeeta Lama (Asia)

Terri Henry (North America)

United Nations system

United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women)

United Nations Population Fund

United Nations Children's Fund

Millennium Development Goal Fund

United Nations Development Programme

United Nations Educational, Scientific and Cultural Organization

Office of the Special Representative of the Secretary-General on Violence against Children

Office of the United Nations High Commissioner for Human Rights

World Health Organization

Food and Agriculture Organization of the United Nations

Non-governmental organizations

International Indigenous Women's Forum

Native Women's Association of Canada

International Work Group for Indigenous Affairs

Baha'i International Community

Andes Chinchasuyu Organization

Assembly of First Nations

International Indian Treaty Council

Lenca People

Rambhau Mhalgi Prabhodini

Tribal Link Foundation

Tewa Women United

Columbia University

States

Argentina

Bangladesh

Belize

Bolivia (Plurinational State of)

Canada

Ecuador

Egypt

El Salvador

Finland

Germany

Guatemala

Honduras

India

Israel

Italy

Mexico

New Zealand

Saudi Arabia

Spain

Russian Federation

United States of America

Annex III

List of documents

Concept note for the international expert group meeting on the theme "Combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples".

Programme of work for the international expert group meeting on the theme "Combating violence against indigenous women and girls: article 22 of the United Nations Declaration on the Rights of Indigenous Peoples".

Paper submitted by Rauna Kuokkanen

Paper submitted by Terri Henry

Paper submitted by Guadalupe Martinez Perez

Paper submitted by Sangeeta Lama

Paper submitted by Edwina Kotoisuva

Paper submitted by Mary Simat

All the reports, including other documents submitted during the meeting, can be found on the website of the secretariat of the Permanent Forum on Indigenous Issues (http://social.un.org/index/IndigenousPeoples/MeetingsandWorkshops/2012.aspx).